



Request for Proposals



MTS SECURITY SERVICES

MTS DOC. NO. G1299.0-10

METROPOLITAN TRANSIT SYSTEM
Purchasing/Procurement Department
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
(619) 557-4552



KEY CALENDAR DATES FOR
MTS SECURITY SERVICES

EVENT

DATE

MTS Issues Request for Proposals:	February 11, 2010
Preproposal Meeting and/or Site Visit (if necessary):	February 24, 2010 at 10:00 a.m., Prevailing Local Time
Deadline for Submitting Written Questions and/or Request for Approved Equals (RFAs):	March 10, 2010, 5:00 p.m., Prevailing Local Time
MTS Issues Response to Written Questions and/or Request for Approved Equals (RFAs):	March 24, 2010
<i>Proposal Due Date:</i>	<i>April 8, 2010, at 2:00 p.m., Prevailing Local Time</i>
Proposal Evaluations and Interviews (if necessary):	Week of April 19, 2010
Best and Final Offer (BAFO):	Week of May 3, 2010
MTS Issues Anticipated Notice of Intent to Award:	Week of May 24, 2010
Anticipated Contract Award (MTS Board):	June 10, 2010
MTS Issues Anticipated Notice to Proceed After Receipt of Signed Contract:	Week of June 28, 2010
Contract Effective:	July 1, 2010

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February 11, 2010

Dear Prospective Proposer:

Subject: REQUEST FOR PROPOSALS FOR MTS SECURITY SERVICES (MTS DOC. NO. G1299.0-10)

The San Diego Metropolitan Transit System (MTS) is interested in receiving proposals from qualified proposers under a negotiated procurement for Security Services. This service will be for MTS and its bus and rail operational arms, San Diego Transit Corporation (SDTC), San Diego Trolley Incorporated (SDTI), San Diego & Arizona Eastern (SD&AE) Railway Company, and San Diego Vintage Trolley, Inc. (SDVTI), collectively referred to as MTS or the Agencies. MTS is a California public agency established by California Public Utilities Code, Section 120000 et seq. MTS and its subsidiaries are subject to the California Tort Claims Act (Cal. Pub. Util. Code § 120202).

This letter, together with its attachments, comprises the formal Request for Proposal (RFP) for the specified services. Responses to this RFP should be submitted in accordance with the instructions stated herein. This proposal package includes the following:

- Proposal Instructions and Conditions (Section A). This attachment offers general instructions on the proposal and evaluation process and describes the requirements that the Proposer must meet.
- Scope of Work (Section B). The Scope of Work and Cost Proposal Forms details the areas of work required.
- Standard Services Agreement, Standard Conditions, Federal Requirements and Forms (Sections C and D). The successful Proposer will be required to execute the Agreement and Forms, and to comply with the insurance provisions contained therein. Any proposed waiver or changes to the Agreement must be clearly identified in the proposal with any cost impacts specifically identified. It is within MTS's discretion to accept or reject any proposed waiver or change to the Agreement. Any requested waivers or changes regarding subcontractors' insurance should identify the subcontractor's scope of work, current insurance levels, and associated costs of proposed insurance amounts.
- Proposal Forms (Section E).
- Addenda Acknowledgement Form (Section F).
- Sample Insurance Certificate (Section G).
- Attachments (Section H).

KEY CALENDAR DATES OF EVENTS

The schedule of events leading from issuance of the RFP to award of a contract is as follows. Proposals arriving later than April 8, 2010, at 2:00 p.m., Prevailing Local Time, or at a different location will not be considered.

<i>EVENT</i>	<i>DATE</i>
MTS issues Request for Proposal	February 11, 2010
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MTS' Issues Response to Written Questions/ Clarifications or Request for Approved Equals (RFAs)	March 24, 2010
<i>Proposal Due Date</i>	<i>April 8, 2010, at 2:00 p.m., Prevailing Local Time</i>
Proposal Presentations, Interviews and/or Negotiations with Short-Listed Firms (if necessary)	Week of April 19, 2010
Best and Final Offer (BAFO)	Week of May 3, 2010
MTS Issues Anticipated Notice of Intent of Award	Week of May 24, 2010
Anticipated Contract Award (MTS Board)	June 10, 2010
MTS Issues Anticipated Notice to Proceed	Week of June 28, 2010
Contract Effective Date	July 1, 2010

MTS POINT OF CONTACT

Marianne Lawrence, Contract Officer, is the sole point of contact for this solicitation. Ms. Lawrence can be reached via telephone at (619) 557-4552 or via email at marianne.lawrence@sdmts.com. Proposers are directed not to contact other representatives of MTS, or MTS Board members in connection with this RFP. Noncompliance with this requirement may result in your firm's proposal being considered nonresponsive.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (NOTE – THIS PROVISION WILL ONLY APPLY TO THOSE CONTRACTS AWARDED AND PAID FOR WITH FEDERAL FUNDS)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 C.F.R. 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." In order to ensure MTS achieves its federally mandated statewide overall DBE goal, MTS encourages the participation of DBEs as defined in 49 C.F.R. 26 in the performance of contracts financed, in whole or in part, with federal funds. Proposer is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the California Department of Transportation (Caltrans) has established a statewide overall DBE goal that MTS must participate in as a condition of receipt of funding. In order to ascertain whether the statewide overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work,

MTS advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is **zero (0%)** percent. **MTS also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.**

Proposer shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference. Proposer's attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- B. A DBE may participate as a prime Proposer, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - 1. Caltrans' "Civil Rights" Web site at: <http://www.dot.ca.gov/hq/bep>.
 - 2. Caltrans' DBE Directory. This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- F. When reporting DBE participation, the Proposer may count the cost of materials or supplies purchased from DBEs as follows:
 - 1. If the materials or supplies are obtained from a DBE manufacturer, count one hundred (100%) percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - 2. If the materials or supplies are purchased from a DBE regular dealer, count sixty (60%) percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
 4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G. When reporting DBE participation, the Proposer may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one (1) fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 6. For the purposes of paragraph 15(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
 7. Prior to the fifteenth (15th) of each month, the Proposer shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Proposer shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Proposer may count only the fee or commission the DBE receives as a result of the lease arrangement. The Proposer shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Proposer in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Proposer in writing with the date of certification. The Proposer shall furnish the written documentation to the engineer.

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

MTS has an Equal Employment Opportunity (EEO) Program for vendors doing business with MTS. All vendors who provide MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees, shall have, maintain, and submit upon request, an EEO Plan to MTS.

The objective of this plan is to assure that the Proposer will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Proposer agrees to take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

With respect to construction activities, the successful Proposer shall comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and any federal statutes, executive orders, regulations and federal policies that may in the future affect construction activities undertaken in the course of the Project.

COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The MTS Equal Employment Opportunity Program will be a part of this agreement (a copy can be obtained from the Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor are a condition for the award of this contract.

1. Prior to the award of this contract, a Contractor must complete and submit a Workforce Report (sample attached).
2. If MTS determines that there is underutilization of women and minorities in a Contractor's workforce, the Contractor shall be required to submit to MTS for its review and approval a written EEO Plan.
3. The Contractor's EEO Plan is to include goals and timetables for employment on a line-by-line (job title) basis. Goals and timetables must be designed to correct any identifiable deficiencies. Where deficiencies exist, the Contractor/Vendor shall establish and set forth specific goals and timetables separately.
4. No Contractor will be required to discharge members of its workforce in order to increase the number of minority or female workers employed.

ENCOURAGEMENT OF USE OF QUALIFIED LOCAL BUSINESS ENTERPRISES

As an expression of policy for procurements not subject to the provisions of Federal Transit Administration Circular 4221.E, and any successors thereof entitled "Third-Party Contracting Requirements," MTS strongly encourages the use of qualified business enterprises with offices located in San Diego County. Such a policy shall not exempt application of the requirements of the Board's Equal Employment Opportunity Plan or the Board's DBE Program. A local business enterprise will be generally defined as having: an office within San Diego County, a current paid business tax certificate or business license listing an address within San Diego County, and at least one (1) full-time employee at this address for at least six (6) months prior to the date of solicitation services. With regard to all procurements, federal and nonfederal, the Chief Executive Officer shall ensure that local business enterprises are given an opportunity to compete. Steps shall be taken to notify all potentially interested local firms.

TERMS AND CONDITIONS

The proposed contract terms and conditions are identified in the Standard Services Agreement - Section C.1, Standard Conditions – C.2, and Federal Requirements and Forms - Section D.

PROPOSAL EVALUATION PROCESS

Any contract resulting from this RFP will be awarded to the qualified Proposer whose proposal, as determined by MTS, best meets the requirements set forth in the Proposal Instructions to Proposers (Section A) and the Scope of Work (Section B). MTS uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include: experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to MTS.

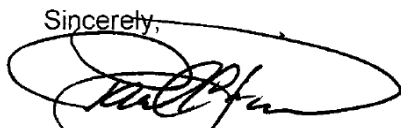
An evaluation committee will review all proposals received using the criteria described in Section A.3.1. MTS may elect to interview qualified proposers. MTS reserves the right to reject all proposals, to select without further discussion or interviews, to request additional information, and to negotiate the final terms and conditions.

MTS may, at its sole and absolute discretion, reject any or all parts of the proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP. The decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFP, shall be at the sole and absolute discretion of MTS.

PROPOSAL ACCEPTANCE PERIOD

One (1) original and eight (8) copies of the completed proposal should be submitted to the MTS Procurement Department **no later than 2:00 p.m., prevailing local time on April 8, 2010.** No exceptions will be made to this deadline. Price Proposals shall be submitted in a sealed envelope separate from the Technical Proposals. All proposals shall be delivered to MTS Procurement Department at 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, Attention: **Marianne Lawrence**, clearly specify on the proposal "MTS Security Services, MTS Doc. No. G1299.0-10." Proposals received later or at a different location than described herein, will not be considered. Proposals will not be accepted via facsimile.

Sincerely,



Paul C. Jablonski
Chief Executive Officer

PCJ/ML:ra

- Attachments:
- A. Proposal Instructions to Proposers
 - B. Scope of Work
 - C. Standard Services Agreement, Standard Conditions and Form
 - D. Federal Requirements, Forms, State Requirements
 - E. Proposal Forms
 - F. Acknowledgement of Addenda Form
 - G. Sample Insurance Certificates
 - H. Attachments

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A.1 PROPOSAL INSTRUCTIONS TO PROPOSERS

A.1.1 PREPROPOSAL MEETING

A preproposal meeting will be held on Wednesday, February 24, 2010, at 10:00 a.m., prevailing local time, at the Metropolitan Transit System building located at 1255 Imperial Avenue, Suite 1000, San Diego, CA. 92101. All prospective Proposers are encouraged to attend the preproposal meeting.

A.1.2 INTERVIEWS

During the evaluation period, MTS may interview some or all of the proposing firms. MTS has identified the week of April 19, 2010 to conduct interviews. All Proposers will be asked to keep these dates available. No other interview dates will be provided, therefore, if a Proposer is unable to attend the interview on these dates; its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Proposer, after which the evaluation committee will ask questions related to the firm's proposal and qualification. The committee will use pre-established criteria during the interview process to score and make their final recommendation.

A.1.3 EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing this quality of work to achieve MTS's objectives.

A.1.4 ADDENDA

The MTS reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. MTS shall provide copies of Addenda to all prospective Proposers officially known to have received the RFP. Prospective Proposers or their agents, shall be responsible to collect the addendum at the address provided, MTS Procurement Department, 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101. Notification of, or the addendum, will also be made available through mail or email, by request, to all such prospective Proposers officially known to have received the RFP, and to the address provided by each prospective Proposer. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer from any obligation under its proposal as submitted under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals, failure to do so may result in disqualification (See Section F - Addenda Acknowledgement Form).

If the MTS determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that the MTS determines will allow Proposers sufficient time to revise their proposals. Any new due date shall be included in the addenda.

A.1.5 CLARIFICATIONS

1. Examination of Documents

Should a Proposer require clarifications of this RFP, the Proposer shall notify MTS in writing in accordance with Section A.1.5.2 below. Should it be found that the point in question is not clearly and fully set forth, MTS will issue a written addendum clarifying the matter, which will be sent to all firms participating in this RFP and that are listed in MTS's Proposers list.

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the preproposal meeting, clarifications, or comments must be put into writing and must be received by MTS no later than **5:00 p.m., prevailing local time, on March 10, 2010.** See attached form, page 95.
- b. Requests for clarifications, questions, and comments must be clearly labeled, "Written Questions." MTS is not responsible for failure to respond to a request that has not been labeled as such. See attached form, page 95.
- c. All requests must provide sufficient information in order to make a decision based upon the initial submittals. MTS shall make its determination based upon this information. Inadequate information will cause your request to be denied. See attached form, page 95.
- d. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:

- (1) **U.S. Mail:** MTS Procurement Department, P.O.
Box 122511, San Diego, CA 92112
- (2) **Overnight Courier:** MTS Receiving Department, 1255
Imperial Avenue, Suite 1000, San
Diego, CA 92101
- (3) **Private Delivery Courier:** MTS Procurement Department, 1255
Imperial Avenue, Suite 1000, San
Diego, CA 92101
- (4) **Facsimile:** MTS Procurement Department – Fax No.
(619) 696-7084
- (5) **E-mail:** marianne.lawrence@sdmts.com

3. MTS Responses

Responses from MTS will be provided in writing to all Proposers and "interested parties." All written questions that contain proprietary or confidential information must be clearly designated. To the extent possible, MTS will not divulge such information to Proposers or "interested parties."

A.1.6 SUBMISSION OF PROPOSALS

1. Due Date and Time

Proposals must be submitted on or before **2:00 p.m., prevailing local time, on April 8, 2010.** Proposals received after the above-specified date and time will be returned to the Proposer unopened.

2. Address

Proposals delivered in person or by private delivery courier shall be delivered to the following address:

**Metropolitan Transit System
Attention: Marianne Lawrence, Contract Officer
MTS Purchasing/Procurement Department
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101**

Proposals delivered by an overnight courier shall be delivered to the following address:

**Metropolitan Transit System
Attention: Marianne Lawrence, Contract Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101**

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

**Metropolitan Transit System
Attention: Marianne Lawrence, Contract Officer
MTS Procurement Department
P.O. Box 122511
San Diego, CA 92112-2511**

3. Identification of Proposals

Proposer shall submit **one (1) original and eight (8) copies** of their proposal in a sealed package, addressed as shown above, bearing the Proposer's name and address and clearly marked as follows:

**MTS SECURITY SERVICES
MTS DOC. NO. G1299.0-10**

Proposers shall be entirely responsible for any consequences resulting from any inadvertent opening of unsealed or improperly identified packages. It is the Proposer's sole responsibility to see that its proposal is received as required. Proposals arriving late due to a delay in the delivery process will not be accepted.

4. Acceptance of Proposals

- a. MTS reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. MTS reserves the right to withdraw this RFP at any time without prior notice, and MTS makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- c. MTS reserves the right to postpone proposal openings for its own convenience.
- d. MTS reserves the right to require confirmation of information furnished by Proposer, or for the Proposer to provide additional evidence of qualifications to perform the work, or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.
- e. Proposals received by MTS are considered public information, and will be made available upon request after award.
- f. Proposals submitted are not to be copyrighted.

A.1.7 PRECONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Proposer in:

1. Preparing its proposal in response to this RFP;
2. Submitting that proposal to MTS;
3. Negotiating with MTS any matter related to this proposal; or
4. Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

MTS shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

A.1.8 PRE-AWARD AUDIT

Prior to contract award, the selected Proposers may be required to undergo an audit of their proposed costs and prices. MTS will conduct the audit for the purpose of determining whether the Proposers' prices are fair and reasonable.

A.1.9 JOINT OFFERS

Where two Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. MTS intends to contract with a single firm and not with multiple firms doing business as a joint venture.

A.1.10 SINGLE PROPOSAL RESPONSE

If only one proposal is received in response to this RFP, and it is found by MTS to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for MTS of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP.

A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements, and the profit factors that comprise a Proposer's price proposal. It should be recognized that a price analysis through comparison to other similar procurements, must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar timeframe. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price.

A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer to Perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort, and whether costs are allowable, allocable and reasonable. Any such analyses and the results there from, shall not obligate MTS to accept such a single proposal; and MTS may reject such proposal at its sole discretion.

A.1.11 TAXES

Price proposals are subject to state and local sales taxes. However, MTS is exempt from the payment of federal excise and transportation taxes.

A.1.12 CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be structured as a firm fixed priced contract, plus cost for services described and included in this RFP as Section B, Scope of Work. The selected Proposer(s) would be paid a fixed price on rate.

A.1.13 PROPOSED AGREEMENT

The successful Proposer will be subject to the provisions contained in Section C, Sample Standard Services Agreement and the General Conditions, and Section D, Federal Requirements (where the individually awarded contract is federally funded) included in this RFP, and this

includes any changes that may be made to reflect the terms of the successful Proposer's proposal. The final Agreement shall also incorporate other pertinent terms and conditions set forth in this RFP.

The Proposer's attention is directed to Section C.2.2, titled "**Insurance**," which specifies the minimum insurance requirements that must be met by the successful Proposer. The Proposer is required to provide evidence of their ability to acquire the required insurance with their proposal. Should the Proposer be unable to provide evidence of insurance within fourteen (14) days after notification of award by MTS, award may be made to an alternative Proposer. (**See Section G for Sample Insurance Certificate**)

The Proposers inability or unwillingness to meet any requirements set forth in Section C, as a condition of contract award, must be stated as an exception in the proposal.

A.1.14 PROTESTS

Any protests by an interested party regarding this procurement shall be made in accordance with protest procedure of the MTS:

1. Protests Based on Content of Procurement Solicitation

Protests based on the content of the procurement solicitation, must be in writing and received by MTS within ten (10) calendar days after the first advertisement of the RFP. The Chief Executive Officer or his designee will notify all Proposers that a protest has been filed, and will issue a written decision on the protest prior to the due date. A protest may be renewed by refiling the protest with MTS within fifteen (15) calendar days from the postmark date of the Notice of Intent to Award.

2. Protests Received After Proposal Due Date

MTS will evaluate all proposals and determine the best-qualified proposers. A Notice of Intent to Award will be mailed to all proposers. Any protest to the notice must be in writing and received by MTS within fifteen (15) calendar days from the postmark date of the notice.

3. Protest Contents

The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the prohibition against exclusionary or unduly restrictive specifications. The protest must contain a full and complete written statement of the grounds for protest and all supporting documentation. MTS may, but is not obligated to, request additional information concerning the grounds for protest.

4. Replies to Protests

MTS' Protest Committee will review all protests as soon as possible. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MTS or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and alleged proprietary information shall be so identified wherever it appears.

MTS' Protest Committee will reply to all protests in writing with its determination.

5. Request for Protest Reconsideration

Upon receipt of MTS' decision, the protestor may file a Request for Protest Reconsideration. A Request for Protest Reconsideration must be directed to the Chief Executive Officer in writing and received within five (5) full working days from the postmark date of the reply from MTS. The Chief Executive Officer shall respond to the protest in writing with his or her determination.

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the Board prior to the opening of the procurement solicitation, in the case of protests based on the content of the procurement solicitation or prior to final award, in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation. A request for an Administrative Hearing regarding a protest shall be in writing and directed to the General Counsel. A request for an Administrative Hearing shall be received within five (5) business days of the Chief Executive Officer's written decision.

The decision of the protest by the Board shall be in writing, and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

6. FTA Review of Protests

A. Review of Protests

1. FTA will only review protests regarding the alleged failure of the subgrantee to have written protest procedures or alleged failure to follow such procedures.
2. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure, shall be submitted and processed in accordance with that federal regulation. See, e.g., Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 23.73.
3. FTA will only review protests submitted by an interested party as defined in paragraph C, below.

B. Remedy

FTA's remedy for a subgrantee's failure to have written protest procedures or failure to follow such procedure is limited to requiring the subgrantee to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue, if the subgrantee desires FTA financial participation in the contract in question. In instances where a grantee has awarded to another Proposer prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

C. Definitions

For the purposes of this Section the following definitions apply:

1. "Days" refers to working days of the Federal Government.
2. "File" or "Submit" refers to the date of receipt by FTA.

3. "Interested party" means an actual or prospective Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
4. "Proposal" includes the term "offer" or "proposal" as used in the context of negotiated procurements.

D. Time for Filing

1. Protestors shall file a protest with the FTA not later than five (5) days after a final decision is rendered under the subgrantee's protest procedure. In instances where the protestor alleges that the subgrantee failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) days after the protestor knew or should have known of the subgrantee's failure to render a final determination on the protest.
2. Subgrantees shall not award a contract for five (5) days following its decision on a Proposal protest except in accordance with the provisions and limitations of subparagraph H. After five (5) days, the subgrantee shall confirm with the FTA that the FTA has not received a protest on the contract in question.

E. Submission of Protest to the FTA

1. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the subgrantee.
2. The protest filed with the FTA shall:
 - (a) Include the name and address of the protestor.
 - (b) Identify the subgrantee, project number, and the number of the contract solicitation.
 - (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
 - (d) Include a copy of the local protest filed with the subgrantee and a copy of the subgrantee's decision, if any.

F. Grantee Response

1. FTA shall notify the subgrantee in a timely manner of the receipt of a protest. FTA shall instruct the subgrantee to notify the protestor of the protest if award has been made or, if no award has been made, to notify all interested parties. The subgrantee shall notify all who receive such notice that they may communicate further directly with the FTA.
2. The subgrantee shall submit the following information not later than ten (10) days after receipt of notification by FTA of the protest:
 - (a) a copy of the subgrantee's protest procedure;

- (b) a description of the process followed concerning the protestor's protest; and
 - (c) any supporting documentation.
- 3. The subgrantee shall provide the protestor with a copy of the above submission.
- G. Protestor Comments. The protestor must submit any comments on the subgrantee's submission not later than ten (10) days after the protestor's receipt of the subgrantee's submission.
- H. Withholding of Award. When a protest has been timely filed with the subgrantee before award, the subgrantee shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the subgrantee determines that:
 - 1. The items to be procured are urgently required;
 - 2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - 3. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the subgrantee determines that the award is to be made during the five (5) day period following the local protest decision or the pendency of a protest, the subgrantee shall notify the FTA prior to making such award. FTA will not review the sufficiency of the subgrantee's determination to award during the pendency of a protest prior to FTA's Proposal protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

- I. FTA Action. Upon receipt of the submissions, FTA will either request further information or a conference among the parties, or will render a decision on the protest.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

A.1.15 DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code Section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder, shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

A.1.16 CHANGES

1. Pre-Award

Prior to award of a contract, the Scope of Work, Technical Specifications, Addenda, Sample Standard Services Agreement, Federal Requirements, forms, and all certification documents of this RFP constitute the potential contract. Any requests to change these must be submitted in writing to MTS. All changes to this RFP will be made by written addendum. **There will be no oral changes - oral communications are not binding.**

MTS's Procurement Department reserves the right to change or cancel the Proposal due date for its own convenience.

2. Post-Award

Upon contract award, the RFP in its entirety, all addenda, MTS' response to questions/clarifications, the final proposal determined to be the most advantageous to MTS, and the Standard Services Agreement and conditions constitute the contract. Changes to the contract shall be conducted as follows:

- a. **Changes by Proposer(s):** Proposed changes must be submitted in writing to the Contracting Officer for prior approval. The request must state the reason, any possible changes to the project schedule, and any impacts to the cost of the project.

The Contract Officer shall respond in writing to the proposed change. All approved changes shall be confirmed by written addendum or change order. Oral changes are not permitted or binding. The Proposer shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered or approved by written modification to the contract. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract dispute clause herein.

- b. **Changes by MTS:** In the event that work, materials, or equipment shall be required that are not specified, indicated, or otherwise provided for herein, the Proposer shall, if ordered in writing by the Chief Executive Officer or his designee, perform such work and furnish such materials or equipment at the Contractor's normal prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both.

If any work, materials, or equipment specified, indicated or otherwise provided for in the contract or in the specifications forming a part of the contract, is required to be omitted from, in, or about the work, the Proposer shall, if ordered by the Chief Executive Officer or his designee, omit the performance of such work and the furnishing of such materials or equipment. There shall be deducted from the amount to be paid to the Proposer an amount, which the Chief Executive Officer or his designee, and the Proposer shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Proposer.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not, in accordance with above provisions referring to additions or omissions, be so increased or diminished as to substantially alter the general character or extent of the contract.

A.1.17 TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- A. immediately discontinue performance on the date and to the extent specified in the notice;
- B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and
- D. assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within thirty (30) calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- C. costs of settling and paying supplier's claim arising out of the canceled orders; and
- D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

A.1.18 TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

- A. MTS will give the Contractor ten (10) days notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.
- C. If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) days time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

A.1.19 ASSIGNABILITY

This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing and shall enter into its own contract with the vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.

A.1.20 DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Bidder is required to seek clarification of any obvious ambiguity contained in the bid documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

A.2 PROPOSAL CONTENT, REQUIREMENTS, AND FORMAT

A.2.1 PRESENTATION

Proposals shall be typed, double-spaced, and submitted on 8½"x11" paper using a single method of fastening. Proposals should be typed and not include any unnecessarily elaborate or promotional materials. Lengthy narrative is discouraged, and presentations should be brief and concise. Proposals should not exceed one hundred (100) pages in length, excluding any appendices. Appendices should provide information relevant to the proposal and not consist of the Proposer's general marketing materials.

A.2.2 LETTER OF TRANSMITTAL

The Letter of Transmittal shall be addressed to Marianne Lawrence, Contract Officer, MTS Procurement Department, and must, at a minimum, contain the following:

Identification of Proposer, including name, address, and telephone number.

- a. Proposed working relationship between Proposer and subcontractors, if applicable.
- b. Acknowledgment of receipt of all RFP addenda, if any. Please use MTS Addenda Acknowledgement Form provided (Section F).
- c. Name, title, address, and telephone number of contact person during period of proposal evaluation.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than one hundred eighty (180) days from the date of submittal.
- e. Signature of a person authorized to bind Proposer to the terms of the proposal.

A.2.3 TECHNICAL PROPOSAL

a. Qualifications, Related Experience, and References of Proposer

This section of the proposal should establish the ability of the Proposal to satisfactorily perform the services by reasons of:

- Experience in performing work of a similar nature;
- Demonstrated competence in the services to be provided;
- Strength and stability of the firm;
- Staffing capability;
- Workload;
- Record of meeting performance standards on similar agreements; and
- Supportive client references.

Particular attention should be given to Section B, Scope of Work, to ensure the Proposer's ability to fulfill all requirements is demonstrated in its submittal. Proposers must identify the service category(ies) to which their proposal applies. For each

category, demonstrate that you (and other personnel or subcontractors that will be performing the work, if applicable) are qualified to perform the pertinent responsibilities described in the attached Scope of Work. Qualifications are demonstrated by the following:

Proposer shall:

- (1) Provide a brief profile of the individual or firm, identify the types of services offered as described in each category outlined in the scope of work; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees. The Proposer must provide the number of years of experience for each area of service they identify.
- (2) Provide a general description of the individual or firm's financial condition and identify any conditions; e.g., bankruptcy, pending litigation, planned office closures, impending merger, which may impede Proposer's ability to provide services.
- (3) Provide a complete list of similar service contracts currently awarded to the individual or firm by MTS or any other public agency. This list shall include an accurate contact name and telephone number for each contract listed, including the present status of each contract. Any requests for a conflicts waiver must be submitted with your proposal.
- (4) Describe the firm's experience in performing like services of a similar nature for public transportation agencies, municipalities, or other government agencies. Include, at a minimum, the name of the contracting agency, type of services provided, the contract period, and the name, address, and telephone number of a contact person. Highlight the participation in such work by the key personnel proposed for assignment to the services described in this RFP. Describe your experience in working with the various government agencies identified in this RFP.
- (5) Identify subcontractors by name, address, contact person, telephone number, and project function. Describe Proposer's experience working with each subcontractor. Describe role of proposed subcontractor.
- (6) Provide as a minimum three (3) references for projects cited as related experience, and furnish the name, title, address, and telephone number of the person(s) at the organization who is most knowledgeable about the services performed. Proposer may also supply references from other work not cited in this section as related experience. Proposer should ensure contact names/telephone numbers are accurate; inaccurate references may be a factor in the overall evaluation of the proposal. Each reference must specifically address start/end dates of the project and services provided that should be correlated with the requirements of this RFP. MTS reserves the right to contact any and all clients or agencies listed as part of the reference verification.

b. Proposed Staffing, Firm Organization, and Management Plan

This section of the proposal should establish the method that will be used by the Proposer to manage the proposed services offered as well as identify key personnel assigned.

Proposer shall:

- (1) Provide education, experience, course work, training, special qualifications, and applicable professional credentials of proposed staff.

- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed responsible management and all key staff or personnel that will be assigned to MTS's management services contract. The ability of the management team to respond immediately to issues relating to the service proposed. The Proposer should demonstrate how this requirement will be fulfilled and should indicate the percentage of time each individual will be dedicated to MTS projects.
- (3) Identify key personnel proposed to perform each category of services selected from the Scope of Work and include areas of subcontracted services.
- (4) Include a firm organization chart, which clearly delineates communication/ reporting relationships among the proposed staff, the subcontractors, and their assigned tasks in relation to MTS service requirements on the project.
- (5) Include a statement that key personnel proposed will be available to perform the proposed services for the duration of the contract acknowledging that no person designated as "key" to the proposed service shall be removed or replaced without the prior written concurrence of MTS.
- (6) Describe the process the firm will use to attract qualified personnel and office staff. Describe the firm's participation in their staffs continued education and training. Also describe the firm's drug and alcohol testing procedures and policy.

c. Work Plan

Proposer shall provide a narrative that addresses the services they are proposing as outlined in the MTS Scope of Work. The narrative should show the Proposer's understanding of MTS's needs and requirements. Throughout the narrative, Proposer will include references for each area of services they are proposing. This section should also address Proposer's plan to fulfill its obligations for the services.

Proposer shall:

(1) Records Retention

Proposers should discuss the process used to establish and maintain MTS's data collected or generated while performing the services. The processes used to ensure confidentiality and the storage terms, where applicable.

(2) Insurance

Submit a statement or provide proof that the required insurance coverage contained in the Proposed Agreement can be obtained by the firm. Should Proposer be unable to provide evidence of insurability, MTS may remove that Proposer's proposal from consideration.

d. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting MTS's technical or contractual requirements, these should be thoroughly explained.

Proposer may also propose procedural or technical enhancements/innovations to the Scope of Work, which do not materially deviate from the objectives or required content of the project.

A.2.4 COST AND PRICE PROPOSAL – A Pricing/Cost Form is provided in Section B of this RFP.

As part of their cost and price proposal, the Proposer shall agree on the following method of compensation listed below. Billing shall correspond to the method of payment approved in each awarded contract. Billing shall be bi-monthly and contain a detailed breakdown as described in Section B – Scope of Work for Services.

Your Cost and Price Proposals are to be provided in a separate, sealed envelope.

A.2.5 APPENDICES

Information considered by Proposer to be pertinent to this project, and which has not been specifically solicited in any of the aforementioned sections, may be placed in a separate attachment section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

A.2.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS – SECTION D

Each awarded contract may be a covered transaction for purposes of 49 C.F.R. Part 29 in the event that federal funding is utilized for payment by MTS. As such, the successful Proposer or Proposer is required to verify that the successful Proposer or Proposer, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are not excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.

The successful Proposer is required to comply with 49 C.F.R. 29, Subpart C, and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower-tier covered transaction it enters into.

By signing and submitting its proposal, the successful Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the successful Proposer knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. The successful Proposer agrees to comply with the requirements of 49 C.F.R. 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The successful Proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

- **Submission Requirements**

Each Proposer shall complete the certification, "Certification of Primary Participant Regarding Debarment, Suspension, and other Responsibility Matters," included in this RFP for itself and its principals and submit this certification with its proposal. Failure to do so may result in rejection of the proposal.

A.2.7 RESTRICTIONS OF LOBBYING – SECTION D

As a recipient of federal funds, MTS is required to certify compliance with the influencing restrictions and efforts of Proposer to influence federal officials regarding specific procurements in excess of \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Proposer to this solicitation will be required to complete and submit to MTS the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place – see Section D.2. If the successful Proposer did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to MTS. This form should be completed and submitted with the proposal. Failure to provide the completed and signed forms will result in the proposal removal from consideration.

A.2.8 DRUG AND ALCOHOL TESTING

Pursuant to the rules and regulations of the Department of Transportation, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

- A. Contractors Certification: Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.
- B. Indemnification of MTS: Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.
- C. Survival of MTS's Indemnification Rights: The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.
- D. Failure to comply with Drug and Alcohol Testing Obligations May Result in Termination of Contract. If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

A.2.9 STATUS OF CURRENT AND PAST CONTRACTS

"Status of Current and Past Contracts," Proposer shall list the status of current and past contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years. A separate form must be completed for each contract. Proposer shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. If Proposer is no longer providing service to the public agency, Proposer is to identify if a new contract was awarded to a different firm through the procurement process, or if the contract was terminated by either public agency or by the contractor for cause or convenience. If the contract was terminated, list the reason for termination. Proposer must identify and state the status of any litigation, claims or settlement agreements related to any of the contracts. Each form must be signed by the Proposer confirming that the information provided is true and accurate. Form located on Page 48.

A.3. EVALUATION AND AWARD

A.3.1 EVALUATION CRITERIA

MTS will evaluate the offers received based on the following criteria:

1. Pass/Fail Criteria

- a. Proposer has demonstrated the ability to meet the insurance requirements described in the Agreement. Proof of ability should be attached to your proposal. (P/F)
- b. Proposer has demonstrated at least 5 years of relevant experience in projects of similar size and scope and is currently licensed by the State of California. Experience is relevant if it falls within a category in the Scope of Work. (P/F)
- c. Proposer has demonstrated previous experience working for or with public agencies, transit entities, or corporations and has at least 3 recent positive references from those sources. (P/F)

If the Proposer does not meet any of the criteria mentioned above, their proposal may not be considered for evaluation:

2. Qualifications of the Firm and Project Personnel **20%**

Technical experience in performing work on services of a similar nature; experience working with public agencies; strength and stability of the firm or on-site operations manager; experience in handling large special events with attendance in excess of 50,000 with emphasis on crowd control, handling dignitaries, and acting in capacity of ambassadors; strength, stability, experience, and technical competence of subcontractors; assessment by client references; references with demonstrated success in providing similar services.

3. Staffing, Firm Organization, and Management Plan **15%**

Qualifications of proposed staff, particularly key personal and the responsible management; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of firm organization; adequacy of labor commitment; hiring and pre-screening practices, extent and methods of background checks, testing (written and oral) and interview process; amount and type of employee training such as on-the-job training by designated Field Training Officers (FTO) or any in-service training such as classes or seminars on anti-terrorism techniques and gang recognition and enforcement strategies. Your response should also include your procedures for delegating work and the types of work given to support staff and associates in order to provide cost-effective services to MTS.

4. Work Plan **15%**

Depth of Proposer's understanding of MTS's requirements as set forth in Section B, Scope of Work, and within this RFP; overall quality of work plan; logic, clarity, and specificity of work plan; appropriateness of labor distribution among the activities; ability to meet services proposed; reasonableness of the services proposed; methods or processes used for data retention and confidentiality; evidence of insurability.

5. Cost and Price

50%

The reasonableness of the total cost proposal and the competitiveness of this amount with other offers received; adequacy of data in support of figures quoted; reasonableness of unit price; basis on which prices are quoted.

A.3.2 EVALUATION PROCEDURE

MTS uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to MTS.

An evaluation committee will be appointed to review all proposals received. The committee will be comprised of MTS staff and may include outside personnel. The committee members will evaluate each proposal using the pass or fail criteria identified in Section A.3.1. Proposers who pass all of the categories of the pass or fail criteria will continue with the evaluation process.

The committee will first evaluate the technical proposals of each firm. The technical proposals will be evaluated and scored by each member of the committee without influence of price. The committee will then open the cost and price proposals from each firm and evaluate and score them accordingly. During the initial evaluation process, the committee may or may not contact any or all of the firms with specific questions or requests for clarification. After both the technical and cost/price proposals have been evaluated and scored, the committee will arrive at a "comprehensive proposal score" for each proposal. A list of top-ranked proposals or firms within a competitive range will be developed based upon the total comprehensive scores of each committee member. At this time, the committee may decide that the evaluation process is complete and final.

If the committee has determined that it is necessary, it may then conduct interviews and negotiations with firms within the established competitive range. MTS has established the week of April 19, 2010, to conduct interviews and negotiations if needed. All prospective Proposers are asked to keep these dates available. No other interview dates will be provided; therefore, if a Proposer is unable to attend one of these dates, their proposal may be eliminated from further consideration. The interview may consist of a short presentation by the Proposer after which MTS may ask questions and/or request clarification related to any part of the firm's proposal and qualifications. MTS may also enter into negotiations with the Proposer.

If interviews and negotiations have been conducted and they have concluded, the evaluation committee may choose to proceed with one of the following processes:

- A. The committee may find it necessary to allow its members to rescore the proposals a second time in light of information gained during the interview and negotiation process. The proposals will be scored in the same manner as the original proposals.
- B. The committee may ask the Proposers to consider the dialog of negotiations and revise their proposals for resubmission. A deadline will be set for submission of the revised proposals. If a Proposer is unable to meet the deadline or chooses not to revise their proposal, their existing proposal will be rescored along with revised proposals in the same manner as the original proposals. (Both Options A and B may result in a new ranking and competitive range.)

- C. The committee may also elect to bypass both Options A and B, and move forward to Best and Final Offers (BAFO).

Proposers remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated. The BAFO's will be scored in the same manner as the original proposals.

After the BAFO's are evaluated and scored, the evaluation committee may recommend to the Chief Executive Officer, a proposal with the highest final ranking or a short list of top ranked firms within the competitive range whose proposal(s) are most advantageous to MTS. The Chief Executive Officer will review the evaluation committee's recommendation and may enter into further negotiations with the Proposer(s) or forward its decision to the full Board of Directors for final action.

A.3.3 AWARD AND EXECUTION

The evaluation committee will evaluate the proposals received and will submit (with approval of the Chief Executive Officer) the proposal considered to be the most advantageous to MTS's Board of Directors for consideration and approval. MTS may also negotiate contract terms with the selected Proposer prior to award and expressly reserves the right to negotiate with several Proposers simultaneously, and to award contracts to multiple Proposers offering the most favorable terms to MTS.

MTS reserves the right to award its total requirements to one Proposer or to apportion those requirements among several Proposers as MTS may deem to be in its best interest. In addition, negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain the Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

Prior to award of the contract, the selected firm may be required to submit to a pre-award audit of their financial records to confirm claims of financial stability and ascertain the capacity of the firm's accounting system responsibilities for administering the Agreement.

A.3.4 NOTIFICATION OF INTENT TO AWARD AND DEBRIEFING

Proposers who submit a proposal in response to this RFP, shall be notified of MTS's intent to award the Contractor. Any protest with this notice must comply with Section A.1.14 - Protest (See Section A.1.14). Proposers who were not awarded the contract, may obtain a prompt explanation concerning the strengths and weaknesses of their proposal, after MTS awards the contract and it is executed by the successful Proposer. Unsuccessful Proposers who wish to be debriefed, must request the debriefing in writing or electronic mail, and MTS must receive it no later than within three (3) days after of the award date.

A.4 SUBMISSION INFORMATION

IMPORTANT!!!

The following forms/information are required to be submitted with your proposal as a matter of responsiveness. If they are not submitted, properly completed, your proposal may be determined nonresponsive. Remember, all proposals (and accompanying information) must be originals, signed, sealed, and received by MTS Procurement Department prior to the scheduled time and date. No faxed proposals will be accepted.

A. MINIMUM TECHNICAL SPECIFICATIONS/SCOPE OF WORK

Cost/Pricing Proposal Forms – Page(s): **33-41**

B. STANDARD CONDITIONS

Certificate of Compliance with MTS Equal Opportunity Program Form – Page **63**

C. FEDERAL REQUIREMENTS

Forms - Pages **81-90**

D. PROPOSAL FORMS

Forms - Pages **92-98**

E. ACKNOWLEDGMENT OF ADDENDA

Form - Page **100**

The following forms/information will be required before a contract will be signed. The successful Proposer must be able to submit this information in a timely manner upon request:

1. CONTRACTORS ENVIRONMENTAL, SAFETY, & HEALTH REQUIREMENTS

Forms - Pages **98**

2. INSURANCE REQUIREMENTS

See Standard Conditions – Section C.2.2, Page **53** and Sample Insurance Certificate(s) – Section G.

SECTION B

	<u>PAGE</u>
B.1 <u>SCOPE OF WORK</u>.....	33-41
B.2 <u>COST/PRICING FORMS</u>.....	42-47
• Status of Current of Past Contracts Form.....	48
• Designation of Experience Form.....	49
• Proposal Certification Form.....	50

B.1 SCOPE OF WORK FOR SERVICES

SECURITY PATROL AND CODE ENFORCEMENT SERVICES

The security force will be under contract to, and under the direction of, the San Diego Metropolitan Transit System (SDMTS) and will report to the MTS Director of Transit System Security. Office space will be made available within MTS facilities for the security force and on-site supervisory personnel to conduct required business, including reporting for duty, preparation of reports and various other tasks, as may be deemed appropriate. The Contractor should be prepared to provide additional off-site office space and facilities for the security force if either MTS or the Contractor deem the MTS facilities inadequate.

The security force will be required to perform a minimum of, but not limited to, the services itemized below.

SERVICES TO BE PROVIDED BY CONTRACTOR:

The security personnel shall be under the direction of MTS and subject to its instructions, regulations, and applicable policies and procedures. The information that follows specifies the areas to be patrolled, the hours of patrol, the work force requirements, and the typical duties of the Security Officer and Office Administration.

1. Areas to Be Patrolled

Contractor shall provide security patrol services and other duties as assigned for the following areas, subject to adjustment by MTS:

A. SDTI Right-of-Way:

The Contractor's Security Officers shall patrol the SDTI rail system: San Diego Trolley Blue Line right-of-way from Centre City San Diego to the International Border in San Ysidro and from Centre City to Old Town, the Orange Line from Bayside to Santee, and the Green Line from Old Town to Grossmont Center (System Map available upon request). The Contractor's Security Officers shall perform duties as described herein or as otherwise directed by MTS. As noted above, the right-of-way limits as defined in this section may be expanded from time to time to accommodate service extensions such as the Mid-Coast Corridor.

B. Passenger Stations, Trains and Right-of-Way:

The Contractor shall provide security at the passenger stations, on board trains, and along the San Diego Trolley right-of-way, described in subparagraph 1.a. above, performing duties as described herein.

C. Parking Lots:

The Contractor's Security Officers shall patrol approximately twenty-five (25) MTS (SDTI and SDTC) parking lots, in support of providing a sense of personal and property safety and security, assisting local police authorities and performing duties as described herein, or as otherwise directed by MTS.

D. Yard and Shop Areas:

The Contractor's Security Officers shall provide security of the MTS maintenance shops and buildings, including the Maintenance of Way (MOW) Building, Light Rail Vehicle (LRV) Buildings and "Stores" facilities, performing duties as described herein, or as otherwise directed by MTS. MTS may request Guards for this assignment, in lieu of full patrol officers.

E. Other MTS-Owned Facilities:

The Contractor's Security Officer/Guard may provide security for other designated MTS owned facilities including, but not limited to, San Diego Transit Corporation (SDTC) Maintenance/Administrative Facilities, including vehicle storage yards located at 16th and Imperial (IAD), the Kearny Mesa Division (KMD), The Transit Store, and Bus Rapid Transit (BRT) stations.

F. Dispatch and Closed Circuit Television (CCTV) Monitoring:

The Contractor shall provide adequate staffing to dispatch security and Code Compliance personnel on a 7/24/365 schedule. The Contractor will provide adequate staffing to monitor the Closed Circuit Television System on a 7/24/365 schedule at CCTV monitoring locations. Personnel assigned to this classification must qualify for use of the ARJIS system. The Contractor shall provide a special classification of security personnel for this task as identified on the Cost Proposal Form.

G. Fixed Posts:

The Contractor shall provide adequate staffing for up to approximately twenty (20) fixed post assignments, that may include 24/7 coverage.

H. Ticket Sales Booth Protection:

The Contractor shall provide armed security officers for the protection of manual ticket sales personnel and revenue. This may include escorting revenue/ticket sales personnel to a collection site.

I. Revenue Collection:

Contractor shall provide armed security officers for the protection of system-wide revenue collection and processing.

J. Special Event Personnel:

The Contractor shall provide on-call part-time security personnel for special events such as Padre Baseball, San Diego Chargers Football, etc. These individuals will not be part of the regularly scheduled security deployment for trolley/transit security. They are used on a per event basis as "Ambassadors" and will not wear the same uniform as the transit security staff. The uniform will be designated by MTS and paid for by the Contractor. The Contractor must be prepared to provide up to thirty-five (35) special event security personnel simultaneously. The Contractor shall provide a special classification of security personnel for this task as identified on the Cost Proposal Form.

K. Special Enforcement Personnel:

The Contractor shall insure that all security personnel are properly trained to participate in both uniformed and plain clothes special operations. Further, personnel must be familiar with and able to respond to national threat advisories issued by the Department of Homeland Security; be trained in responding to bomb threats, natural disasters, and have the ability to remain on duty for extended periods of time during times of elevated threat levels. The Contractor shall provide up to twelve (12) additional personnel per day for indefinite periods during such threat levels.

L. BRT and Mid-Coast:

Within the term of this contract, additional patrol or post assignments may include, but are not limited to, the addition of officer(s) to ensure the safety and security of Park-and-Ride lots along the BRT system. This assignment should be anticipated, but not guaranteed, within the first year of the contract. Additionally, the rail line extension along the Mid-Coast corridor may require patrol or post duties. This assignment may be anticipated, but not guaranteed, the time frame for this assignment is not yet known.

2. Hours of Patrol

Hours of service will be invoiced at regular straight time not to exceed the weekly hour allotment. Overtime and double time will not be billed without advanced written approval by the MTS Director of Transit System Security or other MTS designee.

Rail/bus hours of operation are generally from 4:00 a.m. to 2:40 a.m. daily, but may be adjusted depending upon changes implemented in hours of service. The Contractor, however, shall provide security patrol services in accordance with the schedule approved and authorized by MTS. The approved shift coverage and associated schedule shall be developed by MTS based on operating conditions, hours of service, and special circumstances. The Contractor should be prepared to staff certain assignments seven (7) days per week, twenty-four (24) hours per day. Most shifts require a 4-10 work week schedule.

The approved shift schedule shall take into consideration hours of service, varying ridership patterns (i.e., peak vs. off-peak, special events, emergencies), regular occurrences as pertains to local vehicular traffic activity, and incidents that affect operations. MTS reserves the right to request an increase in work force, as deemed necessary, to fulfill special events.

The Contractor shall be required to provide a security force consisting of primarily armed, full-time assigned Security Officers, Guards, and part-time Officers, who shall perform the various functions and/or duties described in, but not limited to, Item Number 6. Armed officers must possess valid State exposed firearms permits issued by the Bureau of Security and Investigative Services.

Permission to carry Concealed Weapons is considered on a case by case basis. A letter of request from the Contractor will be presented to the Director of Transit System Security. If approved, the Director will issue an authorization letter for submittal to the County Sheriff.

3. Personnel Requirements

The following summary of the current level of service is being provided as a general reference for prospective bidders in order to assist bidders in identifying the size of the current force. Prospective bidders should utilize this information to develop their own coverage plan as required by the RFP.

The Contractor shall provide security personnel an organizational structure capable of meeting all security requirements, as requested by MTS, to ensure adequate security protection for designated areas. Categories of officers shall include, but not be limited to, CCTV, field personnel, patrol units, revenue protection, post guards and supervisors. Firearm certification is the responsibility of the Contractor.

Officers assigned to this contract must comply with MTS/SDTI/SDTC's Drug and Alcohol Policies and Smoking Policy which is included as an attachment in Section H. Officers must pass pre-employment, post-incident/accident and random drug screen, at the expense of the Contractor. Officers must pass pre-employment background checks at the expense of the Contractor.

The Contractor shall provide training to all its officers including, but not limited to: all required State of California training, certificates, guard cards and weapons certifications; defensive tactics, laws of arrest, public relations, conflict resolution, report writing, patrol procedures and any other pertinent training courses applicable to performing security duties at MTS. Officers may also be required to attend MTS in-house training at irregular intervals.

A. San Diego Trolley, Inc. (SDTI)

Staffing shall include one (1) qualified on-site manager, a sufficient number of qualified security supervisors with field experience in transit security operations to provide adequate supervision, and a sufficient number of transit security field training officers to ensure satisfactory field training of assigned personnel. Transit security officer staffing requirements will vary and will be specified by MTS to meet various contingencies and the Contractor will meet all staffing requirements as requested.

Currently there are one hundred forty-four (144) FTE employees. Transit security officers, under the management and supervision of the on-site manager, and the security supervisors, are assigned to MTS (This does not include Special Event Ambassadors). This number may increase or decrease over the period of the contract. The Contractor must organize and implement field-operating units on a variety of shifts, which patrol and provide security services on board trains, in trolley stations and elsewhere on the MTS system on a twenty-four (24) hour basis. The Contractor must design and implement a viable crime suppression unit capable of both undercover and uniformed operations, including surveillance operations. Contractor must also provide units responsible for protecting MTS personnel during revenue collection operations.

In addition to officers assigned to fixed posts and regular duties, the Contractor must be able to provide large contingents of officers, with an appropriate number of field supervisors, for special event staffing with little prior notice. Bidder must be capable of staffing more than one special event simultaneously, without incurring overtime, through the creative manipulation of "barrel days" or shift adjustment. During FY10, approximately one hundred and twenty (120) special events were held system-wide. On occasion, several events requiring in excess of twenty (20) officers at each event were held simultaneously.

The Contractor must demonstrate a viable system for ensuring that personnel assigned to MTS maintain valid State guard registrations, baton permits, exposed firearm permits, and valid driver licenses. The Contractor should demonstrate a feasible program, including incentives, for ensuring that all security officers attend a P.O.S.T.-certified 832 P.C. class within one (1) year of employment. Associated costs are the responsibility of the Contractor.

B. San Diego Transit Corporation (SDTC)

Under the management and supervision of the onsite manager and the security supervisors, the Contractor shall provide security services at MTS' Imperial Avenue bus Division (IAD) and/or Kearney Mesa bus Division (KMD). In addition, up to twelve (12) officers may be assigned to a unit capable of conducting undercover and uniformed crime suppression operations throughout the operating area of MTS' directly operated and purchased transportation bus routes. As part of this unit's operations, the Contractor may provide mobile vehicle patrol of the MTS bus system. With little prior notice, the Contractor must be capable of changing the current staffing structure and meeting additional staffing requirements as specified by MTS. The Contractor must demonstrate a practical system for ensuring that personnel assigned to MTS maintain valid State guard registrations, P.O.S.T.-certified baton permits, attend P.O.S.T.-certified 832 PC classes within one (1) year of employment, maintain exposed firearm permits, and maintain valid driver licenses. Associated costs are the responsibility of the Contractor.

The security force for the bus division shall be under the direction of the Director of Transit System Security and will report to the Director or his or her designated representative. Staff assignments will be based on needs developed by MTS management.

If MTS' bus division adjusts the security patrol services required of the Contractor, whether increased or decreased, the personnel requirements shall be adjusted accordingly.

NOTE: Actual coverage schedules and personnel requirements will be developed by the Director of Transit System Security and Contractor and may change periodically.

C. MTS Contract Services

The Contractor shall provide services as requested to the contracted service buses as the need arises. As part of this unit's operation, the Contractor may provide mobile vehicle patrol and riding patrol on an as needed basis. Staff assignment will be based on needs developed by MTS Management.

4. Equipment Requirements

The Contractor must use an employee/shift scheduling software for use in collaboration with MTS Operations staff to ensure the weekly FTE hour allotment is not exceeded. The software must accommodate a FTE hours goal per week, billing cycle, classification, considering fixed and variable posts, trainees, holidays, split shifts, part time shifts, special events, court appearances, etc. MTS does not pay holiday rates. Holiday pay is at the expense of the contractor.

Contractor must provide each on-duty personnel with a smart phone equipped with GPS tracking capable of log and report entry software.

The Contractor shall provide all necessary equipment, designated and approved by MTS, to each security officer assigned to this contract including, but not limited to:

- Uniforms
- Badges
- Leather Gear
- Ballistic Vests
- Hand Held Portable Radios, when requested (must be the type/level acceptable to SDTI/MTS)
- Firearms
- Ammunition
- Batons
- Footwear
- Crowd Control Equipment (Bullhorns, etc.)

All safety equipment and footwear must be of a type/level acceptable to MTS.

5. Patrol Vehicles

Patrol vehicles are obtained by MTS and are utilized by the Contractor exclusively for MTS security patrol activities. All officers assigned to this contract must possess a valid California Driver License. All costs associated with the purchase/lease, operation, and maintenance of the security vehicles are the responsibility of MTS. The Contractor is responsible for all costs associated with damage caused by misuse or accident repair determined to be the fault of a contract employee. Expenses for loss of MTS issued equipment, such as gas cards/gate keys, radios, etc., will be reimbursed by the Contractor.

Contractor is responsible for vehicle insurance, policy limits and coverage specified in the Standard Services Agreement.

Installation/removal and maintenance of a GPS system on all department vehicles (up to fifteen [15], but currently eleven [11]) is the responsibility of the Contractor. GPS reports will be submitted to the Director upon request.

6. Typical Security Officer Duties

The Security Officers provided by Contractor shall perform duties including, but not limited to, the following:

- A. Prevent the public and unauthorized personnel from entering all restricted areas of MTS facilities and right-of-ways.
- B. Patrol restricted areas on foot and/or by vehicle or bike observing and maintaining the security of fences, public, and private areas in the assigned sector.
- C. Patrol the public areas of the system.
- D. Identify and escort unauthorized persons off the property, summon and assist law enforcement officers where there is sufficient cause for investigation and arrest.
- E. Operate mobile radio equipment, cellular telephones, inter-communication devices, Hand Held Inspection Units (HHU's) and patrol vehicles when necessary or when requested.
- F. Participate in investigations resulting in apprehending persons known, or suspected, to be engaged in unlawful acts on, or adjacent to, the areas for which the Contractor is providing security services.
- G. Perform first aid, maintain order, and assist rescue operations at the scene of accidents and train/bus disasters. Rehearse and engage in emergency security exercises.
- H. Provide security protection for MTS personnel engaged in collection of revenue at stations, and transporting of revenue to a central processing location, or other designated locations.
- I. Routinely interface with the riding public, providing general information relative to use of the system and other necessary information.
- J. Prepare detailed daily logs, incident/accident reports and crime reports (in regional ARJIS format) for cases involving respectively, crime, personal injury, accidents and damage to either public or private property in an accurate level of detail consistent with standard reporting requirements. Comprehensive reports will be entered in designated MTS database using a laptop or desktop computer supplied by the Contractor. Computer equipment must meet MTS specifications. Officers must be capable of keying in data. Associated digital photographs will be uploaded to an MTS-designated global drive.
- K. Assist Code Compliance Inspectors in the performance of their duties. MTDB Ordinance Numbers 2, 3, 5 and 13 are attached in Section H.
- L. Provide security protection for MTS Maintenance/Administrative Facilities and bus storage facilities.

- M. When requested, patrol the perimeter of the MTS bus division (IAD or KMD) Maintenance/Administrative Facilities and other buildings, with emphasis on employee safety and monitoring personal property, including automobiles.
- N. Patrol and provide security protection for other MTS owned and/or operated facilities, including bus stops and The Transit Store.
- O. Respond to and assist agency personnel during accidents involving light rail or non-revenue vehicles, including participation in accident investigations, crowd control, power outages, and developing relevant information with regard to incident details.
- P. Assist and participate in special event ceremonies, to include general protection of participants, including VIP's and others during ceremonies. Typical ceremonies include groundbreaking, grand openings, and other such events.
- Q. Provide security protection and crowd control at MTS facilities during major stadium events including football games, baseball games, music concerts, motor cross, the World Series, and the Super Bowl, including the development of relevant information with regard to pre- and post- event analysis and deployment of personnel.
- R. Apprehend and detain persons who commit criminal acts, and/or violations of MTS Ordinances and MTS authorized California Penal, Health & Safety, Vehicle and Public Utility Codes.
- S. Prepare and provide written documentation of security incidents and apprehensions to MTS in a format approved and utilized by MTS for the gathering of statistical data.
- T. Participate in Special Enforcement Unit (SEU) activities to include fare inspection sweeps.
- U. Routinely conduct fare inspection and passenger counts, onboard and in fare paid zones, and report accordingly.
- V. Provide courier services.
- W. Issue written warnings.
- X. Make citizen's arrests.
- Y. Testify in court, or other proceedings, when subpoenaed or requested and prepare written declarations.
- Z. Bike patrol.

7. Administrative Requirements

Contractor will provide sufficient administrative/clerical staff for the purposes of supporting administrative function on sight. Copy charges, office supplies, phone expenses, etc. are the responsibility of the Contractor. Contractor is responsible for providing ID cards, with MTS-specified HID reading capability, for all personnel. Replacement of lost HID cards is the responsibility of the Contractor.

8. Detailed Invoicing

Provide bi-monthly invoicing, by MTS designated cost centers, that includes a summary, as well as a detailed breakdown, of all hours worked, by officer name, by assignment (such as CCTV, 5th

Avenue, Transit Store, Euclid Ave., SEU, Court, etc.), location (Qualcomm Stadium, Petco Park, etc.), line (Blue Line, Orange Line, etc.), special events (Oktoberfest, Suzuki Marathon, etc.) and billing costs associated with those hours. An additional summary page of each Classification will be provided by the Contractor. Example: Supervisors will be listed with total amount of hours per Supervisor per billing for each supervisor, with a total Supervisor Hours line at the bottom. The total amount of Supervisor hours will not exceed the contract amount. Further requirements by the MTS Finance Department may be required.

9. Office Equipment/Furniture

Purchase of desk, chairs, computers and color printers, fax machines, cell phones (and associated fees), laptops, digital cameras, supplies, and other equipment is the responsibility of the Contractor.

10. Liquidated Damages

A. General

Liquidated Damages (LD's) shall be assessed for tasks not performed as required by the contract. The LD's shall be assessed per day, per occurrence for tasks required on an event, daily, weekly, monthly, bi-monthly, quarterly, bi-annually, or annual basis or any frequency as required by the contract. Once a deficiency occurs due to inadequate Contractor performance, each deficiency shall be assessed the LD rate until the Contractor corrects it.

B. Rates

The rates for the liquidated damages are those that MTS would reasonably expect to incur if we had to contract with another Contractor to perform the tasks plus administrative expenses. The tasks subject to the liquidated damages are those identified in the Scope of Work which are consistent with those that are identified in detail in the contract. The liquidated damage rates per task are:

Officer/Supervisor Hourly Rate X Number of Officers/Supervisors X Number of hours required for the task.

C. Assessment Process

When a deficiency is identified, the Director of Transit System Security (or designee) shall notify the Contractor as soon as possible. The Contractor shall correct the deficiency as reflected below:

- Event tasks: Must be corrected within 24 hours of notification.
- Daily tasks: Must be corrected within 24 hours of notification.
- Weekly tasks: Must be corrected within 24 hours of notification.
- Monthly tasks: Must be corrected within 48 hours of notification.
- Quarterly tasks: Must be corrected within 48 hours of notification.
- Bi-annual tasks: Must be corrected within 72 hours of notification.
- Annual tasks: Must be corrected within 72 hours of notification.

The deficiency must be corrected as stated above. Assessment shall begin the day after the end of the remediation period and will continue until the deficiency is corrected.

Tasks mean everything as specified in the contract. For example, the task of daily officer coverage at a fixed post, comprises a task. If this fixed post were not staffed for a day, this would be considered a deficiency subject to liquidated damages. Since this is a daily

task, liquidated damages will be assessed for this occurrence in addition to correction within twenty-four (24) hours. If this was other than a daily task and the deficiency is not corrected within the remediation period, liquidated damages will begin the following day and will continue until the deficiency is corrected.

All liquidated damages assessed during a given billing period shall be deducted from the bi-monthly invoice.

11. Compliance with MTS Security Procedures (SOPs)

Contractor will comply with all existing and future standard operating procedures, rules, directives, and instructions for MTS, SDTI, and SDTC.

12. Background Check

The Contractor agrees to provide an investigative consumer report and/or consumer credit report for all of its employees that will be assigned to provide service under this contract. An "investigated consumer report" includes any information as to the character, general reputation, personal characteristics, or mode of living. A "consumer credit report" includes any information regarding credit worthiness, credit standing, and/or credit capacity. The specific nature and scope of the investigative consumer report required under this contract will include inquiries regarding educational background; work history; personal financial status and credit history if job requires handling money or MTS finances; court records, including criminal conviction record, as permitted by law; driving history, if driving is part of assigned employees job duties; and references obtained from professional and personal associates. Contractor also will agree to obtain an authorization from its employees agreeing that an investigative consumer report and/or consumer credit report may be obtained at any time, and any number of times, as the Contractor deems necessary during the term of contract.

The Contractor agrees to provide detailed requirements of their background checking process and agrees to add to or modify their scope if required by MTS. At a minimum Contractor will not assign any employee to services under this contract that has had a felony conviction within the past seven (7) years; is on active probation; a misdemeanor conviction for weapons or violence-related offenses, drug-related offenses, or theft-related offenses in the past seven (7) years.

Please visit our website www.sdmts.com for supplemental information about the MTS agencies.

Forms attached in Section H:

1. System Map
2. Drug and Alcohol Policies
3. Smoking Policy
4. MTDB (MTS) Ordinances 2, 3, 5 and 13

B.2 COST AND PRICING FORMS

Proposer shall submit pricing to provide the services for all the work described in Section B.1, Scope of Service. In preparing a cost proposal, Proposers are requested to provide a total all-inclusive cost for each year of service and provide a breakdown of fees, overhead, labor hours, travel, and miscellaneous expenses.

RFP TITLE AND MTS DOC. NO.: MTS SECURITY SERVICES MTS DOC. NO. G1299.0-10

PROPOSAL DUE DATE/TIME: APRIL 8, 2010 AT 2:00 P.M., PREVAILING LOCAL TIME

Category	(A) *Billable Hourly Wage	(B) Annual Hours	(A x B) Extended Cost
Armed Security Officer (approx. 100)			
Year 1			
Year 2			
Year 3			
Year 4			
Armed Supervisor (Lieutenant) (approx. 2)			
Year 1			
Year 2			
Year 3			
Year 4			
Armed Supervisor (Sergeant) (approx. 8)			
Year 1			
Year 2			
Year 3			
Year 4			
Unarmed Security Officer (approx. 30)			
Year 1			
Year 2			
Year 3			
Year 4			
Part-Time Event Ambassadors (approx. 25)			
Year 1			
Year 2			
Year 3			
Year 4			

PROPOSER ACCEPTS RESPONSIBILITY FOR ACCURACY AND PRESENTATION OF THE ABOVE NUMBERS.

**Estimated quantities are for proposal purposes only. The quantities do not reflect guaranteed usage by MTS.*

NOTE: ALL PROPOSERS MUST COMPLETE PROPOSAL FORMS AS PROVIDED, FAILURE TO DO SO WILL DEEM THE PROPOSAL NON-RESPONSIVE.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
MTS SECURITY SERVICES – MTS DOC. NO. G1299.0-10
COST PROPOSAL – CONTINUED

Category	(A) * Billable Hourly Wage	(B) Annual Hours	(A x B) Extended Cost
Unarmed Dispatch/CCTV Officer (approx. 6)			
Year 1			
Year 2			
Year 3			
Year 4			
Armed Site Manager (Captain) (approx. 1)			
Year 1			
Year 2			
Year 3			
Year 4			
Armed Courier Service (approx. 15 hours a month)			
Year 1			
Year 2			
Year 3			
Year 4			
Guard (approx. 4)			
Year 1			
Year 2			
Year 3			
Year 4			
Equipment			
Profit			
Total Base Contract			

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES – MTS DOC. NO. G1299.0-10
COST PROPOSAL - CONTINUED

Category	(A) *Billable Hourly Wage	(B) Annual Hours	(A x B) Extended Cost
Option Year 1			
Armed Security Officer			
Armed Supervisor (Lieutenant)			
Armed Supervisor (Sergeant)			
Unarmed Security Officer			
Part-Time Ambassadors			
Unarmed Dispatch/CCTV Officer			
Armed Site Manager (Captain)			
Armed Courier Service			
Guard			
Equipment			
Profit			
Total Option Year 1 Contract			

Option Year 2			
Armed Security Officer			
Armed Supervisor (Lieutenant)			
Armed Supervisor (Sergeant)			
Unarmed Security Officer			
Part-Time Ambassadors			
Unarmed Dispatch/CCTV Officer			
Armed Site Manager (Captain)			
Armed Courier Service			
Guard			
Equipment			
Profit			
Total Option Year 2 Contract			
Grand Total			

*** Please complete Overhead Cost Breakdown pages for Billable Hourly Rate.**

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES – MTS DOC. NO. G1299.0-10
COST PROPOSAL - CONTINUED

Labor Category		Armed Security Officer	Armed Supervisor (Lieutenant)	Armed Supervisor (Sergeant)	Unarmed Security Officer	Part-Time Event Ambassador	Unarmed Dispatch/CTV Officer	Armed Site Manager (Captain)	Armed Courier Service	Guard
Current Actual Hourly Wage										
Percentage										
Employee Taxes										
FICA										
FUI										
Liability										
SUI										
Workmans comp										
Other:										
Other:										
Subtotal										

Accruals										
Vacation										
Overtime										
Training										
Holidays										
Other:										
Other:										
Subtotal										

PROPOSER ACCEPTS RESPONSIBILITY FOR ACCURACY AND PRESENTATION OF THE ABOVE NUMBERS.

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RETAIN OTHER PAGES FOR YOUR RECORDS**

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES – MTS DOC. NO. G1299.0-10
COST PROPOSAL - CONTINUED

Labor Category		Armed Security Officer	Armed Supervisor (Lieutenant)	Armed Supervisor (Sergeant)	Unarmed Security Officer	Part-Time Event Ambassador	Unarmed Dispatch/CTV Officer	Armed Site Manager (Captain)	Armed Courier Service	Guard
Other Operating Costs (please specify all other costs) **										
Percentage										
SubTotal										

* Transfer Billable Hourly Rate to Pricing Sheet Column '(A) Billable Hourly Rate'

PROPOSER ACCEPTS RESPONSIBILITY FOR ACCURACY AND PRESENTATION OF THE ABOVE NUMBERS.

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES – MTS DOC. NO. G1299.0-10
COST PROPOSAL - CONTINUED

CONTRACT TOTAL									
Labor Category	Armed Security Officer	Armed Special Event Officer	Armed Supervisor (Lieutenant)	Armed Supervisor (Sergeant)	Unarmed Security Officer	Unarmed Special Events Officer	Unarmed Dispatch/CCTV Officer	Armed Site Manager (Captain)	Armed Courier Service
*GRAND TOTAL (Billable Hourly Rate)									

PROPOSER ACCEPTS RESPONSIBILITY FOR ACCURACY AND PRESENTATION OF THE ABOVE NUMBERS.

NOTE: ALL PROPOSERS MUST COMPLETE PROPOSAL FORMS AS PROVIDED, FAILURE TO DO SO WILL DEEM THE PROPOSAL NON-RESPONSIVE.

Read attached General Provisions carefully. They are a part of your proposal. Unit prices will prevail regardless of extensions submitted by the Proposer. The following Addenda have been noted and attached hereto:

F.O.B. POINT: San Diego Metropolitan Transit System
 Attn: Project Manager
 1255 Imperial Avenue, Suite 1000
 San Diego, CA 92101

FIRM / COMPANY NAME: _____

LEGAL STRUCTURE (Corp./Partner/Proprietor): _____

ADDRESS: _____

CITY, STATE & ZIP: _____

PHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

AUTHORIZED SIGNATURE: _____

PRINT NAME OF PERSON AUTHORIZED TO SIGN: _____

TYPE OR PRINT NAME: _____

TITLE: _____

DATE: _____

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

STATUS OF CURRENT AND PAST CONTRACTS

On the form provided below, Proposers shall list the status of current and past contracts where their security services have been or are currently being utilized as a prime contractor or a subcontractor during the past five (5) years. A separate form must be completed for each contract.

Proposer shall provide an accurate contact name and telephone number of each contract and indicate the terms and scope of the contract and the original contract value. The Proposer must indicate if the contract has been completed or still in progress. The Proposer must also indicate if the contract was terminated by either the procuring agency or by the Contractor for cause or convenience. If the contract was terminated, list the reason for termination. The Proposer must identify and state the status of any litigation, claims, or settlement agreements related to any of the contracts.

Each form must be signed by the Proposer confirming that the information provided is true and accurate.

<i>Project city/agency/other:</i>	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Terms and Scope of Contract:	
1) Status of Contract:	
2) Identify Claims / Litigation or Settlements Associated with each Contract:	

By signing this form, "Status of Current and Past Contracts," I am affirming that all of the information provided is true and accurate.

Signature

Title

Date

**RETURN THIS FORM WITH YOUR PROPOSAL
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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES
MTS DOC. NO. G1299.0-10

DESIGNATION OF EXPERIENCE

Name of Proposer:

Reference #1:

Company Name:

Contact:

Telephone #:

Reference #2:

Company Name:

Contact:

Telephone #:

Reference #3:

Company Name:

Contact:

Telephone #:

Reference #4:

Company Name:

Contact:

Telephone #:

Reference #5:

Company Name:

Contact:

Telephone #:

Reference #6:

Company Name:

Contact:

Telephone #:

**RETURN THIS FORM WITH YOUR PROPOSAL
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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES
PROPOSAL CERTIFICATION FORM

_____, [authorized person] of _____ [company name]
certify that I have read and will comply with all proposal materials and requirements as stated in the
proposal materials.

Please initial that you have completed, understood, submitted, and will comply with the following:

- _____ I have completed, signed, and submitted the Proposal forms.
- _____ I have completed, signed, and submitted the Status of Current and Past Contracts form.
- _____ I have completed and submitted the Designation of Experience form.
- _____ I have completed, signed, and submitted the Certificate of Compliance with MTS Equal Opportunity Programs (EOP) form, including the Equal Opportunity Program Workforce Report.
- _____ I have completed, signed, and submitted the Buy America Certificate (Alternative A or B).
- _____ I have completed, signed, and submitted the Subcontractor's Statement of Eligibility form.
- _____ I have completed, signed, and submitted the Public Contract Code Section 10162 Questionnaire and Statement of Eligibility form.
- _____ I have completed, signed, and submitted the Noncollusion Affidavit form.
- _____ I have completed, signed, and submitted the Certification of Restrictions on Lobbying.
- _____ I have completed, signed, and submitted the Disclosure of Lobbying Activities.
- _____ I have completed, signed, and submitted the Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusion Lower-Tier Covered Transactions.
- _____ I have completed, signed, and submitted the Equal Opportunity Program Workforce Report.
- _____ I have completed, signed, and submitted the Type of Business form.
- _____ I have completed, signed, and submitted the Safety Rules form.
- _____ I have completed, signed, and submitted the Addenda Acknowledgement form.

Signed: _____

Date: _____

Print Name: _____

Title: _____

**RETURN THIS FORM WITH YOUR PROPOSAL
RETAIN OTHER PAGES FOR YOUR RECORDS**

SECTION C

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C.1 SAMPLE STANDARD SERVICES AGREEMENT**STANDARD SERVICES AGREEMENT****G1299.0-10**
CONTRACT NUMBER

FILE/PO NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____ 2010, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: _____ Address: _____

Form of Business: _____
(Corporation, partnership, sole proprietor, etc.)

Telephone: _____

Authorized person to sign contracts: _____
Name Title**The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services and materials, as follows:**

Provide MTS Security Services as specified in MTS' Request for Proposals (RFP) MTS Doc. No. G1299.0-10, including Addenda, Responses to Approved Equals/Clarifications; and in accordance with the Standard Services Agreement, Standard Conditions Services, Scope of Work, and MTS Security Services proposal (hereinafter "Contract Documents"). If there are any inconsistencies between the Contract Documents, the following order of precedence will govern the interpretation of this contract.

1. MTS Security Services Request for Proposal, Addendum, Responses to Approved Equals/Clarifications, MTS Safety Program, and Contractor's Bid.
2. Standard Service Agreement, including the Standard Conditions Services, and Federal Requirements.

The term of the contract shall be _____.

Total contract amount shall not exceed \$ _____.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM**CONTRACTOR AUTHORIZATION**By: _____
Chief Executive Officer

Approved as to form:

By: _____
Office of General Counsel

Firm: _____

By: _____
Signature

Title: _____

AMOUNT ENCUMBERED

BUDGET ITEM

FISCAL YEAR

\$ _____ 2011

By: _____
Chief Financial Officer

Date

(____ total pages, each bearing contract number)

SA-SERVICES REVISED (REV 05-09)

STANDARD CONDITIONS
SERVICES

1. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this agreement. Except as otherwise specifically provided, as an independent contractor, Contractor will be solely responsible for determining means and methods for performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who hold a current policyholder's alphabetic and financial-size category rating of not less than AV, in accordance with Best's Insurance Report. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

- (a) Commercial General Liability At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear.

- (b) Automobile Liability At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- (c) Workers' Compensation/Employer Liability At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

☐ (1) Owner-Provided Builder's Risk
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

☐ (2) Railroad Protective or Equivalent
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

☐ (3) Professional Liability
REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this agreement.

☐ (4) Pollution Legal Liability
REQUIRED

At all times during this contract, and for twenty-four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this agreement. The extended discovery period must be no less than twenty-four (24) months.

☐ (5) Contractor Equipment
REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

☐ (6) Installation Floater
REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

☐ (7) Garage Keeper's Legal Liability & Automobile Portion
REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

☐ (8) Construction Work Agreements
REQUIRED

- (a) Contractor agrees to utilize ISO coverage forms CG2010, 10/85 **or** ISO coverage forms CG2010 and CG2037, or equivalent forms, to comply with the additional Insured requirement stated in section 2.A.(1)(b).
- (b) Contractor agrees to provide a Designated Project Aggregate Limit Endorsement (per project aggregate) utilizing form CG2503 or equivalent Form.

☐ (9) Umbrella or Excess Liability (if required to meet liability limits above)
REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

☒ (10) Primary and Non-Contributory Insurance
REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

C. MINIMUM POLICY LIMITS REQUIRED

		<u>Limits</u>
Commercial General Liability	<u>\$2,000,000</u>	Per Occurrence
	<u>\$5,000,000</u>	General Aggregate
	<u>\$2,000,000</u>	Completed Operations & Products Aggregate
Automobile Liability	<u>\$2,000,000</u>	Combined Single Limit
Worker's Compensation Employer's Liability	<u>\$1,000,000</u>	

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B (1) Builder's Risk	<u>Replacement Cost</u>
<input type="checkbox"/> B (2) Railroad Protective	<u>\$</u>
<input type="checkbox"/> B (3) Professional Liability	<u>\$</u>
<input type="checkbox"/> B (4) Pollution Liability	<u>\$</u>
<input type="checkbox"/> B (5) Contractor Equipment	<u>Replacement Cost</u>
<input type="checkbox"/> B (6) Installation Floater	<u>Replacement Cost</u>
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability	<u>\$</u>
(Combined Single Limit (CSL) Per Occurrence)	

D. POLICY PROVISION REQUIRED

All policies and coverages shall contain a provision for thirty (30) days written notice by the Insurer(s) to MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten (10) day notice is required for non-payment of premium.

E. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. **SPECIAL PROVISIONS**

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

3. **TERMINATION OF AGREEMENT**

MTS may terminate this agreement, in whole or in part, at any time by written notice to the Contractor when it is in MTS's best interest. The Contractor shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MTS to be paid to the Contractor. If the Contractor has any property in its possession belonging to MTS, the Contractor will account for the same and dispose of it in the manner that MTS directs.

The Contractor shall notify subcontractors and service or supply vendors providing services under this contract of the early termination date of this contract. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this contract, except those specifically agreed to in the termination notice to the Contractor.

4. **INDEMNITY**

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

5. **NONASSIGNMENT**

Any attempt by Contractor to assign, subcontract, or transfer all or part of this agreement shall be void and unenforceable without MTS's prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this agreement.

6. **SUBCONTRACTORS**

Any contract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions stipulated in this contract to be applicable to subcontractors, including, but not limited to, provisions pertaining to costs, records, and payment methods.

7. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

8. CONSIDERATION PAID

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed \$ exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of \$0.00. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of \$.

Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded state employees under current State Department of Personnel Administration rules detailed in the State Travel and Expense Guide.

Equipment purchases shall be made in accordance with 49 CFR, Part 18.32.

9. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MTS's Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this agreement (a copy can be obtained from MTS's Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity (EEO) Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract.

10. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

11. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

The Contractor shall not be entitled to additional compensation for out-of-scope work unless he has given MTS a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to MTS prior to the time Contractor shall have performed the work, if based on an act or failure to act by MTS or in all other cases within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that any claim for out-of-scope work be brought to the attention of MTS at the earliest possible time in order that matters related to any such work can be settled in a prompt manner. The Contractor hereby agrees that he shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

12. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this agreement, or to collect any portion of the amount payable under this agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

13. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (APPLIES TO FEDERALLY FUNDED CONTRACTS ONLY)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." In order to ensure MTS achieves its federally mandated statewide overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

As required by federal law, the California Department of Transportation (Caltrans) has established a statewide overall DBE goal that MTS must participate in as a condition of receipt of funding. In order to ascertain whether that statewide overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. To assist Proposers in ascertaining DBE availability for specific items of work, MTS advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and the likely DBE availability advisory percentage is **zero (0%) percent**. **MTS also advises that participation of DBEs in the specified percentage is not a condition of execution of this Agreement.**

Contractor shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Contractor's attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- B. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - 1. Caltrans' "Civil Rights" Web site at: <http://www.dot.ca.gov/hq/bep>.
 - 2. Caltrans' DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:
 - 1. If the materials or supplies are obtained from a DBE manufacturer, one hundred (100%) percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - 2. If the materials or supplies are purchased from a DBE regular dealer, count sixty (60%) percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
 4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one (1) fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 6. For the purposes of paragraph 15(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
 7. Prior to the fifteenth (15th) of each month, the Contractor shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

15. PROMPT PAYMENT

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

16. RECORDS RETENTION

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. MTS, the state, the State Auditor, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

17. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that she or he has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, MTS shall have the right to annul this agreement without liability or, at its discretion, to deduct from the agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

18. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this agreement shall be delivered to and become the property of MTS. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

19. TIME

The Contractor acknowledges that timely performance is an important element of this agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

20. ENTIRE AGREEMENT

This agreement is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor. All questions pertaining to the validity and interpretation of this agreement shall be determined in accordance with the laws of California applicable to contracts made to be performed within the state.

21. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MTS deems appropriate.

22. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

23. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

SA-SERVICES REVISED (REV 05-09)
DATE

Attachments: Certificate of Compliance
Federal Requirements

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CERTIFICATE OF COMPLIANCE
WITH MTS EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the San Diego Metropolitan Transit System (MTS), I will comply with the provisions of MTS Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below, the successful bidder must execute and return this form even if no DBE participation will be reported:

Company Name and Address	Description of Work	Dollar Amount

If one hundred (100%) percent of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MTS.

Date: _____

Firm: _____

By: _____

Signature: _____

Title: _____

**RETURN THIS FORM WITH YOUR PROPOSAL
RETAIN OTHER PAGES FOR YOUR RECORDS**

SECTION D

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D.1 FEDERAL REQUIREMENTS

I. No Federal Government Obligations to Third Parties

As a Federal Transit Administration (FTA) grantee, the Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor of the following information:

The federal government shall not be subject to any obligations or liabilities to any third-party contractor or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including the third-party contractor.

II. False or Fraudulent Statements or Claims

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Section 3801, et seq., and U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies" 49 CFR, Part 31, apply to its actions pertaining to this contract. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 U.S.C., Section 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C., Section 1001 and 49 U.S.C., Section 5307(n) (1), to the extent the federal government deems appropriate.

III. Buy America

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The bidder's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 CFR, Part 661). Information on "Buy America" requirements (49 CFR, Part 661) is available for review at the MTS office.

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- A. Applying this provision would be inconsistent with the public interest.
- B. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this project.
- C. Including domestically produced material will increase the cost of the contract by more than twenty-five (25%) percent.

- D. Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.
- E. Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than sixty (60%) percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.
- F. In reference to exception C above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (ten [10%] or twenty-five [25%] percent) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall project contract." When both "rolling stock" and "nonrolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.
- G. Thus, the foreign purchased components of the individual bid items will be adjusted upward for purposes of determining Buy America compliance only, by ten (10%) percent for rolling stock and twenty-five (25%) percent for nonrolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.
- H. The revised bid amount will be the basis for determining the lowest bidder.
- I. Within five (5) days of written notification, the bidder shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR, Part 661.
- J. The Buy America Certificate included in the Contract Documents, Alternative 'A' or 'B,' must be completed and submitted with the bid. A bid which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
- K. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the bidder for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

IV. Environmental Violations

As an FTA grantee, MTS is required to inform the Contractor of the following information:

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC, 1857H), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (ENO329).

V. Environmental Requirements

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder shall recognize that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969,

as amended, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The successful bidder shall recognize that U.S. EPA, FHWA and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the project. Thus, the successful bidder agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and MTS. The successful bidder acknowledges that this list does not constitute the successful bidder's entire obligation to meet all federal environmental and resource conservation requirements.

A. Environmental Protection The successful bidder shall comply with the applicable requirements of the National Environment Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. in accordance with Executive Order no. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

B. Air Quality

1. The successful bidder shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Specifically:

a. The successful bidder shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the successful bidder shall implement each air quality mitigation and control measure incorporated in the Project. The successful bidder agrees that any Project identified in a State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.

b. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the successful bidder should be aware that the following U.S. EPA regulations, among others may apply to its projects: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate U.S. EPA Regional Office.

C. Clean Water

1. The successful bidder shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.
2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate U.S. EPA Regional Office.

- D. Use of Public Lands The successful bidder agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the project unless the FTA makes the specific findings required by 49 U.S.C. § 303.

- E. Mitigation of Adverse Environmental Effects The successful bidder agrees that if the project should cause adverse environmental effects, the successful bidder will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The successful bidder agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. § 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. As soon as the federal government and the successful bidder reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The successful bidder agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

VI. Energy Efficiency

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

VII. Prohibited Interests

As an FTA grantee, MTS is required to inform the Contractor of the following information:

No, member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising there from.

VIII. Debarment and Suspension

As an FTA grantee, MTS is required to inform the Contractor of the following information:

This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are not excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.

The Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29 Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

IX. Title VI Civil Rights Act of 1964

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. Compliance with Regulations The Contractor and any Subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 49 U.S.C. § 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, or age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. Information and Reports The Contractor shall provide all information and reports required by the regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FTA to be pertinent to ascertain compliance with such

regulations, orders, and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to MTS or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance In the event of Contractor's noncompliance with nondiscrimination provisions of this contract, MTS shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- withholding of payments to the Contractor under the contract until the Contractor complies; and/or
- cancellation, termination, or suspension of the contract, in whole or in part.

- F. Incorporation of Provisions The Contractor shall include the provisions of Sections A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as MTS or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance provided; however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MTS to enter into such litigation to protect the interests of MTS, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

X. Restrictions on Lobbying

- A. MTS and Contractor shall not use federal assistance funds to support lobbying.
- B. In accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has: (a) received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the project is originally derived, consistent with 31 U.S.C. § 1352, and (b) if applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the project.
- C. The Contractor agrees to provide MTS a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is included in this package for your use.

XI. Employee Protections

- A. Construction Activities For construction activities exceeding \$2,000 performed in connection with the project, the successful bidder shall comply with the following construction employee protection requirements:
1. Davis-Bacon Act, as amended The successful bidder shall comply and assure compliance with the requirements of 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a through 276a (7), and implementing U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards

Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5. In addition to other requirements that may apply:

- a. The successful bidder shall pay wages to laborers and mechanics performing third party contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The MTS agrees to furnish the bidder a copy of the current prevailing wage determination issued by the U.S. DOL for third-party contract work under the project upon request, and agrees to refrain from awarding any affected third-party contract until the third-party contractor agrees to the required wage determination.
- b. MTS shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.

2. Contract Work Hours and Safety Standards Act, as amended The successful bidder shall comply and assures compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 333; and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926. In addition to other requirements that may apply:

- a. In accordance with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours, and that each worker shall be compensated for work exceeding the standard work week at a rate of not less than one and one half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The successful bidder shall ensure that determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the contract Work Hours and Safety Standards Act," 29 C.F.R. Part 5.
- b. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 333, the successful bidder shall assure that no laborer or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926."
- c. The requirements of this subsection do no apply to third-party contracts for the purchase of supplies, materials, or articles ordinarily available on the open market.

3. Copeland "Anti-Kickback" Act, as amended The successful bidder shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. In addition to other requirements that may apply:
 - a. The successful bidder will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
 - b. MTS shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its federal implementing regulations to FTA.
- B. Activities Not Involving Construction For nonconstruction activities exceeding \$2,500 performed in connection with the project, the successful bidder shall comply with the following employee protection requirements:
 1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than one and one half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The successful bidder agrees that determinations pertaining to these requirements will be made in accordance with the applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
 2. The requirements of this subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.
- C. State and Local Government Employees The successful bidder shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the project.
- D. Transit Employee Protective Arrangements The successful bidder shall comply with the following requirements applicable to transit operations performed in connection with the project:
 1. Standard Transit Employee Protective Arrangements To the extent that transit operations are involved, the successful bidder shall carry out the project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the project and to meet the requirements of 49 U.S.C. § 5333(b), and U.S. guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the project in compliance with the conditions stated in that U.S. DOL certification. That U.S.

DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance projects for the elderly and persons with disabilities authorized by 49 U.S.C. § 5310(a) (2) or to formula assistance projects for nonurbanized areas authorized by 49 U.S.C. § 5311.

2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for the Elderly and Persons with Disabilities If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for public body subrecipients under the project, the successful bidder shall carry out the project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.
3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas The successful bidder shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

XII. Cargo Preference

If applicable, 46 U.S.C. 1241(b) (1) and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement.

- A. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least fifty (50%) percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The Contractor shall furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C., 20590, marked with appropriate identification of the project.
- C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

XIII. Reporting, Record Retention, Access to Records

- A. Reports At a minimum, the Contractor agrees to provide MTS and FTA those reports required by U.S. DOT's grant management rules and any other reports MTS or the Federal Government may require.

- B. Record Retention The Contractor shall, during the course of the project and for three (3) years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the project as MTS or the federal government may require for the project.
- C. Access to Records Upon request, the Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the successful bidder and its contractors pertaining to the project. In accordance with 49 U.S.C. § 5325(a), the successful bidder shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

XIV. Seismic Safety (APPLICABLE TO ALL CONSTRUCTION CONTRACTS FOR NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS)

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

XV. Federal Changes

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October 1999) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XVI. FTA Protest Requirements

As an FTA grantee, MTS is required to inform the Contractor of the following information:

A. Duty to Exhaust Local Procedures

Once the Contractor exhausts MTS's protest procedures, as described in applicable MTS Board Policies, the Contractor may request review from the FTA.

B. FTA Review of Protests

The FTA will only review protests regarding the alleged failure of the grantee to have written protest procedures or the grantee's alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of appropriate state or local administrative or judicial authorities.

Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 23.73.

The FTA will only review protests submitted by an interested party, as defined below.

C. Remedy

The FTA's remedy for a grantee's failure to have written protest procedures, or failure to follow such procedures, is limited to requiring the grantee to develop such procedures in reviewing the protest at issue, if the grantee desires the FTA's financial participation in the contract in question. In instances where a grantee has awarded to another bidder or offeror prior to the FTA's decision on the protest, the FTA may refuse to participate in funding the contract.

Definitions For the purposes of this section, the following definitions apply:

Days – refers to working days of the federal government.

File or Submit – refers to the date of receipt by the FTA.

Interested Party – means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

Bid – include the term “offer” or “proposal” as used in the context of negotiated procurements.

D. Time for Filing

Protestors shall file a protest with the FTA no later than five (5) days after a final decision is rendered under the grantee's protest procedure. In instances where the protestor alleges that the grantee failed to make a final determination on the protest, protestors shall file a protest with the FTA no later than five (5) days after the protestor knew, or should have known, of the grantee's failure to render a final determination on the protest.

Grantees shall not award a contract for five (5) days following the decision on a bid protest, except in accordance with the provisions and limitations of subparagraph h. After five (5) days, the grantee shall confirm with the FTA that it has not received a protest on the contract in question.

E. Submission of Protest to FTA

Protests should be filed with the appropriate FTA regional office with a concurrent copy to the grantee.

The protest filed with the FTA shall include the name and address of the protestor; identify the grantee, project number, and the number of the contract solicitation; and contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures, or the alleged failure to have procedures and be fully supported to the extent possible. A copy of the local protest filed with the grantee and a copy of the grantee's decision should be included, if any.

F. Grantee Response

The FTA shall notify the grantee in a timely manner of the receipt of a protest. The FTA shall instruct the grantee to notify the contractor of the protest if award has been made, or, if no award has been made, to notify all interested parties. The grantee shall notify all who receive such notice that they may communicate further directly with the FTA.

The grantee shall submit the following information no later than ten (10) days after receipt of notification by the FTA of the protest: a copy of the grantee's protest procedure; a description of the process followed concerning the protestor's protest; and any supporting documentation.

The grantee shall provide the protestor with a copy of the above submission.

G. Protestor Comments

The protestor must submit any comments on the grantee's submission no later than ten (10) days after the protestor's receipt of the grantee's submission.

H. Withholding of Award

When a protest has been filed in a timely manner with the grantee before award, the grantee shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the grantee determines that the items to be procured are urgently required; delivery or performance will be unduly delayed by failure to make the award promptly; or failure to make prompt award will otherwise cause undue harm to the grantee or the federal government.

In the event that the grantee determines that the award is to be made during the five (5) day period following the local protest decision, or the pendency of a protest, the grantee shall notify the FTA prior to making such award. The FTA will not review the sufficiency of the grantee's determination to award during the pendency of a protest prior to the FTA's bid protest decision. The FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

I. FTA Action

Upon receipt of the submissions, the FTA will either request further information or a conference among the parties or will render a decision on the protest.

XVII. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XVIII. Charter Bus and School Bus Service Requirements (APPLICABLE ONLY TO OPERATIONAL BUS SERVICE CONTRACTS)

A. Charter Service Operations The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

- B. School Bus Operations Pursuant to 69 U.S.C. 5323(f) and 49 C.F.R. Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

XIX. Recycled Products Requirements (APPLICABLE TO ALL CONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PROCURING AGENCY PURCHASES \$10,000 OR MORE OF ONE OF THESE ITEMS IN A FISCAL YEAR, OR WHEN THE COST OF SUCH ITEMS PURCHASED DURING THE PREVIOUS FISCAL YEAR WAS \$10,000)

Recovered Materials The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

XX. Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by the FTA.

XXI. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

XXII. Patent and Rights in Data

- A. Rights in Data These following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape,

or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - d. Unless prohibited by state law, upon request by the Federal Government, the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting

within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- 3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights The following requirements apply to each contract involving experimental, developmental, or research work:

- 1. General If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- 2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations,

"Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

XXIII. Drug and Alcohol Testing Requirements (APPLICABLE TO OPERATIONAL BUS SERVICE CONTRACTS)

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, any California regulation agency, or MTS, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 when requested by MTS and to submit the Management Information System (MIS) reports before March 1 annually to MTS. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

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3/13/07 (REVISED)

Attachments: Buy America Certificate
Additional Information for Buy America Certificate - Alternative B
Subcontractor's Statement of Eligibility
Public Contract Code Section 10162 Questionnaire/Statement of Eligibility
Noncollusion Affidavit
Certification of Restrictions on Lobbying
Disclosure of Lobbying Activities
Disclosure of Lobbying Activities Continuation Sheet
Instructions for Completion of SF-LLL Disclosure of Lobbying Activities

D.2 REQUIRED FEDERAL FORMS – ALL THESE FORMS MUST BE PROPERLY EXECUTED AND RETURNED WITH YOUR PROPOSAL – YOU MAY RETAIN OTHER PAGES FOR YOUR RECORDS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

BUY AMERICA CERTIFICATE

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH SECTION 165(a)

The bidder hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R. 661.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____
(SIGN HERE)

ALTERNATIVE B

The bidder hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 C.F.R. 661.7.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____
(SIGN HERE)

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE - ALTERNATIVE B

The bidder hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 C.F.R. 661.7.

Item No.	Description	Type of Waiver Requested by No. (1)	Indicate Rolling Stock or Nonrolling Stock	Description of Foreign Components of Item	Unit Procurement Cost of Foreign Components

- Notes: (1) For "Type of Waiver Requested," See Buy America, Name of Contractor: _____
Section 7-5.8. List Type 1, 2, 3, or 4.
(2) Bidder must complete either Alternative A or B
Buy America Certificate.

Signature of Contractor: _____
(SIGN HERE)

Date: _____

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM
SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

_____ certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal project by any federal department or agency.

Where the Subcontractor is unable to certify any of the statements in the certification, such Subcontractor shall attach an explanation with this form.

The Subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable.

Name and Title of Official

Signature: _____ Date: _____

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM
PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the contractor, any officer of the contractor, or any employee of the contractor who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

YES ☐

NO ☐

If the answer is yes, explain the circumstances in the following space.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____
(SIGN HERE)

STATEMENT OF ELIGIBILITY

_____ hereby certifies that it

☐ is ☐ is not
(Must Check One)

included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____
(SIGN HERE)

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

NONCOLLUSION AFFIDAVIT

(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

In accordance with Title 23, United States Code Section 112, and Public Contract Code 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid; and has not, directly or indirectly, colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____
(SIGN HERE)

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

The CONTRACTOR hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 20_____.

Name of Contractor: _____

Signature of Contractor: _____ Date: _____

(SIGN HERE)

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DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action</p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action</p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. postaward</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only:</p> <p>Year _____ quarter _____</p> <p>date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime</p> <p><input type="checkbox"/> Subawardee</p> <p>Tier _____, if known:</p> <p>Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p>
<p>6. Federal Department/Agency:</p>		<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>
<p>8. Federal Action Number, if known:</p>		<p>9. Award Amount, if known:</p> <p>\$ _____</p>
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p style="text-align: right;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		<p>b. Individuals Performing Services (including address if different from No. 10a)</p>
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>		<p>13. Type of Payment (check all that apply);</p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time fee</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> other; specify: _____</p>
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. in-kind; specify: nature _____</p> <p style="text-align: right;">value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p> <p style="text-align: right;">(attach Continuation Sheet(s) SF-LLL-A if necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No. _____ Date: _____</p>
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

PSmith/BF-CONTINUATION - 8/10/98

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INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, or the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in items 4 or 5.
10.
 - A. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
 - B. Enter the full names of the individual(s) performing services, and include full address if different from 10A. Enter last name, first name, middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND
VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

The Lower Tier Participant (Applicant for a third-party subcontract or sub-grant under a FTA Project), _____, certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the Lower Tier Participant (Applicant for a third-party subcontract or sub-grant under a FTA Project), is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid.

THE LOWER TIER PARTICIPANT (APPLICANT FOR A THIRD-PARTY SUBCONTRACT OR SUB-GRANT UNDER A FTA PROJECT) _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET.SEQ. ARE APPLICABLE THERETO.

Authorized Official

Attorney's Signature

Title of Authorized Official

Date

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SECTION E

	<u>PAGE</u>
E.1 <u>PROPOSAL FORMS</u>.....	92-98
• Equal Opportunity Program Workforce Report.....	92
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• Safety Department Standard Operating Procedures and Form.....	97-98

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

EQUAL OPPORTUNITY PROGRAM
WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 26. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the Employer Information Report, EEO-1, in lieu of this form.

PLEASE COMPLETE ALL SECTIONS OF THIS FORM:

A. Name of Company: _____

B. AKA/DBA: _____

C. Address of Establishment Located in San Diego County (if different from above):

D. If there is no office in San Diego County, or if there are less than fifteen (15) employees in that office, include an address for your regional office that will oversee the work under MTS's contract:

City County State Zip Code

E. Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS's contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros.

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OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Over all Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians												
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED											
----------	--	--	--	--	--	--	--	--	--	--	--

F. The undersigned hereby certifies that the foregoing data contained herein is true and correct:

Authorized Signature

Name of Signee

Title

Date

G. Name, Address and Phone Number of Person to Contact Regarding this Report:

METROPOLITAN TRANSIT SYSTEM
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

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ETHNIC IDENTIFICATION:

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.

Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.

Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition

Other: Caucasian and others not falling into one of the designated categories.

DISABLED DEFINITION

Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial	Other Office/Clerical
Executive, Management Related	*N.E.C.: Not Elsewhere Classified
Engineers/Architects/Surveyors	Protective Services
Professionals (N.E.C.)*	Supervisors of Protective Services
Mathematical and Computer Scientists	Firefighting and Fire Prevention
Natural Scientists	Police and Detectives
Health Diagnosing	Guards & Other Protective Services
Health Assessment and Treating	Services (N.E.C.)*
Teachers, Postsecondary	Private Households
Teachers, except Postsecondary	Food Preparation and Services
Counselors, Educational and Vocational	Health Services
Librarians, Archivists, Curators	Cleaning and Building Services
Social Scientists and Urban Planners	Personal Services
Social, Recreation and Religious Workers	Craft Workers (Skilled)
Lawyers and Judges	Supervisors of Mechanics and Repairers
Writers, Artists Entertainers & Athletes	Vehicle and Mobile Equipment Mechanics and Repairers
Technicians	Heating, Air Conditioning, Refrigeration, Mechanics
Health Technologists and Technicians	Other Mechanics and Repairers
Engineering and Related Technologists and Technicians	Supervisors of Construction Trades
Science Technicians	Construction Trades, Except Supervisors
Technicians, Except Health, Engineering and Service	Extractive Occupations
Sales	Precision Production Occupations
Supervisors and Proprietors	Machine Operators, Assemblers & Inspectors
Sales Representatives, Finance and Business	Metalworking and Plastic Working Machine Operator
Services	Metal and Plastic Processing Machine Operators
Sales Representatives, Commodities except Retail	Woodworking Machine Operators
Sales Workers, Retail and Personal Services	Printing Machine operators
Other Sales Related	Textile, Apparel and furnishing Machine Operators
Administrative Support	Machine Operators, Assorted Materials
Supervisors of Administrative Support	Fabricators, Assembler and Hand Working Occupations
Computer Equipment Operators	Production Inspector, Tester, Sampler, Weigher
Secretaries, Stenographers, Typists	Transportation and Material Moving
Information Clerks	Motor Vehicle Operators
Records Processing, Except Financial	Rail Transportation Occupations
Financial Records Processing	Water Transportation Occupations
Duplicating and Other Office Machine Operators	Material Moving Equipment Operators
Communications Equipment Operators	Laborers (Unskilled)
Mail and Message Distributing	Handlers
Material Recording and Distributing Clerks	Equipment Cleaners
Adjusters and Investigators	Helpers & Laborers

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUAL

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in "Proposer Communications and Requests" (Section A.1.4).

Request #: _____	Proposer: _____
Solicitation Ref: _____	Page: _____ Section: _____
Questions/Clarification or Approved Equal: _____ _____ _____ _____ _____ _____ _____ _____	
MTS: _____ _____ _____ _____ _____ _____ _____ _____	

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

TYPE OF BUSINESS FORM

Name of Proposer: _____

Principal Business Address: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

1. What form of business is your organization? Please check one of the following.

☐ Sole Proprietorship

☐ Partnership (Limited ☐ / General ☐)

☐ Corporation

2. If a Corporation, when and where was your organization incorporated? _____

3. If a Limited Partnership, when and where is your organization certified? _____

4. State of California certified DBE, ESB, or other? ☐ Yes / ☐ No

If yes, Certification Number: _____

Date: _____

Firm: _____

Signature: _____

Name (Printed): _____

Title: _____

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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

SAFETY DEPARTMENT **STANDARD OPERATING PROCEDURES**

FOR

CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)
January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for San Diego Transit Corporation's Contractors.

Background: SDTC is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all SDTC Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Transit Corporation.
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and SDTC safety programs.
- Sign the SDTC Contractual Agreement with Outside Agencies (Safety Rules).

SDTC Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

SAFETY RULES

**MTS Contractual Agreement with Outside Agencies
Work on MTS Premises**

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

Date: _____

Authorized Representative: _____ Title: _____
Signature

Your signature implies that you have read and understand and agree to follow these safety requirements.

**RETURN THIS FORM WITH YOUR PROPOSALS
RETAIN OTHER PAGES FOR YOUR RECORDS**

SECTION F

PAGE

F.1	<u>MTS SECURITY SERVICES ADDENDA ACKNOWLEDGEMENT FORM</u>.....	100
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SAN DIEGO METROPOLITAN TRANSIT SYSTEM

MTS SECURITY SERVICES
MTS DOC. NO. G1299.0-10

ADDENDA ACKNOWLEDGEMENT FORM

Proposer acknowledges the receipt of the following Addenda:

<i>ADDENDUM</i>	<i>CHECK (✓) RECEIVED</i>	<i>DATE RECEIVED</i>		<i>ADDENDUM</i>	<i>CHECK (✓) RECEIVED</i>	<i>DATE RECEIVED</i>
ADDENDUM NO. 1				ADDENDUM NO. 4		
ADDENDUM NO. 2				ADDENDUM NO. 5		
ADDENDUM NO. 3				ADDENDUM NO. 6		

FIRM NAME: _____

ADDRESS: _____

TELEPHONE: _____ **FAX:** _____

PLEASE PRINT NAME OF INDIVIDUAL RESPONSIBLE FOR THE PREPARATION OF THIS PROPOSAL:

DATE: _____

PRINT NAME: _____

SIGNATURE OF PROPOSER: _____
(Sign Here)

TITLE: _____

**RETURN THIS FORM WITH YOUR PROPOSAL
RETAIN OTHER PAGES FOR YOUR RECORDS**

SECTION G

	<u>PAGE</u>
G.1 <u>SAMPLE INSURANCE CERTIFICATE ATTACHED</u>	102-103

G.1 SAMPLE OF INSURANCE CERTIFICATE

Client#: 5387		SDMETROPTRA1				
ACORD™ CERTIFICATE OF LIABILITY INSURANCE			DATE (MM/DD/YYYY) Current			
PRODUCER Name Address Address Continued Phone Number		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
INSURED Contract Holder Name Address Address Continued Phone Number		INSURERS AFFORDING COVERAGE INSURER A: GL Insurance Company INSURER B: AL Insurance Company INSURER C: WC Insurance Company INSURER D: PL Insurance Company INSURER E:	NAIC # 00000 00000 00000 00000			
COVERAGES THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR ADD'L TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	Sample 00123	11/01/2007	11/01/2008	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
	GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY	\$
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				GENERAL AGGREGATE	\$2,000,000
					PRODUCTS - COMP/OP AGG	\$2,000,000
B	AUTOMOBILE LIABILITY	Sample 00456	11/01/2007	11/01/2008	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Sample 00789	11/01/2007	11/01/2008	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$1,000,000
					E.L. DISEASE - POLICY LIMIT	\$1,000,000
D	OTHER Professional Liability	Sample 12345	11/01/2007	11/01/2008	2,000,000 Limit Replacement Cost	
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS Re: Contract Number(s) : G1299.0-10 With respect to General Liability and Automobile Liability, San Diego Metropolitan Transit System (MTS), San Diego Trolley Inc (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV) and San Diego Transit Corporation (See Attached Descriptions)						
CERTIFICATE HOLDER Metropolitan Transit System 1255 Imperial Avenue, Suite 1000 San Diego, CA 92101-7490			CANCELLATION Ten Day Notice for Non-Payment of Premium SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE			
			Signature Required			

ACORD 25 (2001/08) 1 of 3

#S418347/M418103

MTGAG

© ACORD CORPORATION 1988

POLICY NUMBER: Sample 00123

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES or
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

San Diego Metropolitan Transit System (MTS), San Diego Trolley Inc (SDTI),
San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV) and
San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Re: Contract Number(s)

PRIMARY INSURANCE:
IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY
AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED
SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS
INSURANCE.

CG 20 10 11 85

SECTION H

	<u>PAGE</u>
H.1 <u>ATTACHMENTS</u>	105
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• MTS Ordinances 2, 3, 5, and 13.....	110-122

SYSTEM MAP





8. APPENDIX

A. MTS Drug and Alcohol Policy

PURPOSE:

The purposes of this policy are as follows:

- a. To establish and maintain a safe, healthy working environment for all employees;
- b. To reduce the incidence of accidental injury to person or property;
- c. To reduce absenteeism, tardiness and indifferent job performance; and
- d. To provide assistance towards rehabilitation for any employee who seeks help in overcoming addiction to, dependence on, or problems with alcohol or drugs.

BACKGROUND:

The hazards of drug and alcohol use extend far beyond the user. Drug or alcohol-impaired employees endanger themselves as well as their fellow workers. The results include increased claims for health care and worker's compensation; increased liability risks; decreased safety, work quality, and productivity; and ultimately, destroyed lives. This policy sets forth rules and regulations regarding the use of drugs or alcohol by MTS employees while on MTS business or on MTS Agency premises. MTS employees who work at MTS Bus (SD Transit Corp.) or MTS Rail (SD Trolley, Inc.) are subject to the policies pertaining to their Agency.

1. Illegal drugs, legal drugs, and alcohol

- a. **Illegal Drugs.** The sale, offer to sell, purchase, use, transfer or possession of illegal drugs while on MTS Agency business or on premises or property is prohibited. Violation of this rule will result in disciplinary action, up to and including termination. Termination is likely for a violation of this rule, even for a first offense.
- b. **Illegal drug means any drug:** (a) which is not legally obtainable, or (b) which is legally obtainable but has not been legally obtained. The term includes marijuana whether or not it has been prescribed by a physician. It includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes.
- c. No employee shall bring drug paraphernalia onto MTS premises or property or into MTS vehicles.



MTS MANAGEMENT HANDBOOK
SECTION 8 Effective March 1, 2009

- d. **Legal Drugs.** The use of legal drugs at a level, or in a manner, combination or quantity, which impedes an employee's ability to perform his/her job is prohibited and may lead to disciplinary action, up to and including termination.
- e. **Alcohol.** No employee shall consume alcoholic beverages during working hours, in Agency vehicles, or on MTS premises or property. The use of alcohol at a level or in a manner which impedes an employee's ability to perform his/her job is prohibited. Violation of these rules can result in disciplinary action, up to and including termination.
- f. **Conviction of a violation of a criminal drug statute.** An employee convicted of a criminal drug statute occurring in the workplace, shall notify MTS no later than five days following the conviction.

2. Prohibition Against Employees Having Illegal Drugs in their Bodies During Working Time

- a. All employees of the MTS must report for work with no illegal drugs or their metabolites, in their bodies. Employees must not have illegal drugs, or their metabolites, in their bodies at any time while on the job. Compliance with this rule is considered an essential job qualification for all employees. Violation of this rule will result in disciplinary action, up to and including termination. Termination is likely for a violation of this rule, even for a first offense.

3. Enforcement of Rule Prohibiting Employees from Having Illegal Drugs in their Bodies during Working Time or Being Impaired or Affected by Alcohol or Drugs

- a. When MTS has probable cause to believe that illegal drugs are, or may be, present in an employee's bodily system or when MTS has probable cause to believe that an employee or group of employees is, or may be, impaired or affected on the job by alcohol or drugs in violation of the rules set forth above, an employee will be required to submit to an alcohol/drug screen test immediately upon demand by MTS. Refusal to submit to such a test may be sufficient grounds for termination. Any employee failing such a test may be subject to termination from employment with MTS.
- b. **Employee Assistance Program**
 - i. Any employee, who feels that he or she has developed an addiction to, dependence upon or problem with alcohol or drugs, legal or illegal, is encouraged to seek assistance. No disciplinary action will be issued against any employee who comes forward with their problem prior to the Agency learning of a violation of the drug and alcohol policy. Assistance may be sought by contacting an immediate supervisor or the Human Resources Manager.
 - ii. Each request for assistance will be treated as confidential.



MTS MANAGEMENT HANDBOOK
SECTION 8 Effective March 1, 2009

- iii. Employees seeking assistance will be referred to a hospital or community organization offering alcohol or drug treatment programs.
- iv. Rehabilitation itself is the responsibility of the employee. However, any employee seeking medical attention for alcoholism or drug addiction will be entitled to what benefits are available under the MTS's group medical insurance plans with the restrictions and limits stated in the applicable plan summary. Employees on rehabilitation leave will be subject to the leave of absence policies outlined in the Administrative Code.
- v. To be eligible for continuation of employment with MTS following rehabilitation, the employee must:
 - 1. Begin a program of rehabilitation, strictly follow the rules and guidelines of that program, and sign a release of all medical information, including that related to drug and alcohol treatment, so that progress can be monitored.
 - i. Failure of such a test during this period shall be grounds for immediate dismissal; and
 - ii. Maintain an acceptable attendance and performance record and comply with all other organizational rules and policies upon their return to work.
 - 2. As part of the Employee Assistance Program, MTS will conduct an ongoing drug-free awareness program including periodic distribution of anti-drug and alcohol information.

MTS SMOKING POLICY



1255 Imperial Ave., Suite 1000
San Diego, CA 92101
619.231.1466 FAX 619.696.7084

New MTS Smoking Ban Ordinance Summary

May 10, 2007

On January 18, 2007, the MTS Board of Directors adopted a new Ordinance regarding Smoking in and around transit property. Following is the adopted Ordinance and associated definitions.

Please note that this Ordinance applies to all MTS employees, designated agents of MTS and MTS patrons. These personnel may not display any type of smoking apparatus in public as described below. Effective immediately, employees who wish to smoke while on break must do so out of public view. Additionally, employees may not smoke in any MTS vehicle.

Section 13.10: No Smoking at any Transit Facility or Bus Stop

No person shall smoke any materials, whether tobacco or any other product using any device, cigarette, cigar, pipe, or any other apparatus, or utilize any smoking device, cigarette, cigar, pipe, or other apparatus at the following locations owned, operated, or controlled by MTS, SDTI, and/or SDTC:

Within 25 feet from any bus stop. A "bus stop" is a designated area marked by a sign depicting a specific route number or numbers for the loading and unloading of passengers from or onto a bus, which may or may not include a bench or shelter.

Within 25 feet of any trolley station. A "trolley station" is a designated area marked by a sign depicting a specific line; i.e., Orange, Blue, Red, Green, etc., for the loading and unloading of passengers from or onto a trolley, which may or may not include a bench or shelter. For enforcement purposes, this will not generally include parking lots.

Within 25 feet of any transit facility. A "facility" or "transit facility" includes, but is not limited to, transit centers, rail stations, bus shelters, and bus stops on public or private property. This does not include yard and shop facilities.

Discretion will be utilized enforcing this Ordinance in areas bordering Fare Paid Zones within the 25 foot limit as well as in the MTS parking lots. The significance of this issue is considerable as in many cases adjacent City sidewalks are within 25 feet of the Trolley stations.

With the exception of the SDSU station, this Ordinance will not be enforced until such time as "No Smoking" signs are received and properly posted. Additionally, to alert the public, information related to this Ordinance will be posted on the MTS webpage and a "Take One" will be distributed on all transit vehicles. Once the signs are installed, we intend to provide verbal warnings for a brief period of time, followed by written warnings for another period before we begin issuing Notice to Appear citations.

We anticipate there will be an increase in phone calls, or direct contact with MTS staff, reporting violations. Should this occur, politely take the information and advise the reporting party that you will pass the information along to MTS Security for follow-up.

We appreciate your cooperation in abiding by this Ordinance. If you have any questions, please discuss with your supervisor.



Metropolitan Transit System (MTS) is comprised of the Metropolitan Transit Development Board (MTDB) a California public agency, San Diego Transit Corp., and San Diego Trolley, Inc., in cooperation with Chula Vista Transit and National City Transit. MTS is Taxicab Administrator for eight cities. MTDB is owner of the San Diego and Arizona Eastern Railway Company. MTDB Member Agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

ORDINANCE NO. 2

(as adopted 6/8/81, and as amended through 7/13/00)

An Ordinance Requiring Proof of Fare Payment By Passengers Using the San Diego Trolley

The Board of Directors of the San Diego Metropolitan Transit Development Board (MTDB) do ordain as follows:

SECTION 1

Section 2.1: Findings

In 1979 by Resolution No. 79-2, MTDB adopted a self-service, barrier-free fare collection system for use with respect to the Light Rail Transit System, after finding that such a fare collection system would maximize overall productivity. Those findings are hereby reaffirmed for the San Diego Trolley System. In order to make the self-service, barrier-free fare collection system as productive and efficient as possible, it is necessary to adopt this Ordinance pursuant to Sections 120105 and 120450 of the Public Utilities Code requiring proof of fare payment by passengers using the San Diego Trolley system.

Section 2.2: Definitions

The following terms as used in this Ordinance shall have the following meaning:

- A. Inspector - An officer(s) or employee(s) of MTDB or of San Diego Trolley, Inc., authorized by Ordinance by MTDB or a peace officer(s) designated by MTDB, to check passengers for valid proof of fare payment with the authority to arrest and issue a Citation of Fare Evasion to passengers not possessing or exhibiting valid proof of fare payment and to otherwise enforce the provisions of this Ordinance.
- B. Proof of Fare Payment - Proof of fare payment means any of the following:
 - 1. A monthly pass (Adult, Youth, or Senior/Disabled) or other time-delimited pass valid for use on the Trolley, purchased by or for the passenger, and valid for the time of use.
 - 2. A single-ride ticket purchased by or for the passenger from a Trolley fare vending/validating machine. This single-ride ticket is valid provided the passenger in possession is qualified for the fare category printed on the ticket, the passenger is on a trolley traveling in a direction away from the boarding station printed on the ticket, the passenger is on a trolley within the distance from the boarding station for which the fare specified on the ticket is valid, and the passenger is using the ticket within two hours of the date and time printed on the ticket. The single-ride ticket must be valid for the entire length of time that the passenger in possession is onboard the Trolley.
 - 3. A multi-ride ticket valid for use on the Trolley that has been validated using a Trolley fare vending/validating machine. This ticket is valid provided the passenger possessing the ticket is on a trolley traveling in a direction away from the boarding station most recently printed on the ticket, the passenger possessing the ticket is on a trolley within the distance from the station of validation of which the cash fare specified on the ticket is valid, and the passenger possessing the ticket is using the ticket within two hours of the date and time most recently printed on the ticket. The multi-ride ticket must be valid for the entire length of time that the passenger in possession is onboard the Trolley.

- 4. A valid transfer from a public bus system in San Diego County with any required upgrade-to-trolley transfer ticket issued from a Trolley fare vending/validating machine. All such transfers shall be considered valid proof of fare payment until the expiration time printed
- C. Citation for Nonpayment of a Fare - Means the written notice to appear issued by an Inspector to a passenger arrested for violating this Ordinance whereby the passenger is released on his promise to appear in court at the date, time, and place specified in the written notice.
- D. Passenger - any person occupying, riding or using any trolley vehicle, boarding or de-boarding such a vehicle or waiting within a designated paid zone waiting area at a Trolley station.

(Section 2.2 amended July 13, 2000)

(Section 2.2 amended September 26, 1996)

(Section 2.2 amended January 14, 1993)

Section 2.3: Proof of Payment

No unauthorized person shall board, occupy, ride in, use or deboard any any trolley vehicle or stand within a designated paid zone waiting area at a Trolley station without possessing and exhibiting, upon demand of an Inspector, valid proof of fare payment.

(Section 2.3 amended January 14, 1993)

Section 2.4: Agreement

The use of any trolley vehicle shall constitute an agreement by the user to pay the applicable fare in accordance with the effective fare Ordinance established by MTDB and to have in his/her immediate possession proof of fare payment.

Section 2.5: Proof of Fare Payment Procedures

- A. Upon demand of an Inspector, every passenger occupying, riding or using any trolley vehicle, boarding or deboarding such a vehicle or waiting within a designated paid zone waiting area at a Trolley station shall exhibit proof of fare payment to the Inspector as required by this Ordinance.
- B. If a passenger does not possess or exhibit valid proof of fare payment, the Inspector shall arrest such passenger and, if the passenger does not demand to be taken before a magistrate, the Inspector shall deliver to that passenger a Citation for Nonpayment of a Fare. The Citation for Nonpayment of a Fare shall contain the name and address of the passenger, the date the citation was issued, a description of the violation, the date, time, and place when and where such passenger shall appear in court, the name of the Inspector, and the signature of the passenger to whom this citation is delivered, which signature shall indicate the passenger's promise to appear in court at the date, time, and place specified in the citation. The Citation for Nonpayment of a Fare shall also state a warning that the passenger's willful failure to appear in court as promised is a separate violation for which the passenger may be arrested and punished pursuant to the California Penal Code.
- C. The failure or refusal of any passenger to exhibit proof of fare payment, provide positive identification as to his/her full name and residence, or sign the citation for Nonpayment of a Fare shall subject the passenger to all other provisions and remedies provided by law.
- D. Failure of or refusal by the passenger to sign the Citation for Nonpayment of a Fare shall not affect the enforceability of this Ordinance.

(Section 2.5 amended January 14, 1993)

Section 2.6: Penalties

Any violation of Section 2.3 of this Ordinance shall be an infraction punishable by a fine not exceeding fifty dollars (\$50), except that such a violation by a person, after the second conviction under the Ordinance, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding six months, or by both such fine and imprisonment. For purposes of this section, a bail forfeiture shall be deemed to be a conviction of the offense charged.

SECTION 2: Public Notice

Before the expiration of fifteen (15) days after its passage, this Ordinance shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

SECTION 3: Operative Date

This Ordinance shall be operative on October 1, 2000.

DDarro
CD-ORD02.JLIMBE
7/21/00

Amended: 7/13/00
Amended: 9/26/96
Amended: 1/14/93
Repealed & Readopted: 2/27/84
Adopted: 6/8/81

MTS ORDINANCE 3

SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD

ORDINANCE NO. 3

(As adopted June 8, 1981, and as amended through 1/11/96)

An Ordinance Regulating Parking in San Diego Trolley Parking Lots

The Board of Directors of the San Diego Metropolitan Transit Development Board (MTDB) do ordain as follows:

Section 3.1: Findings

MTDB adopts this Ordinance establishing conditions and regulations applicable to vehicle parking and traffic in San Diego Trolley (hereafter "Trolley") parking lots and other transit facilities including bus transit centers and transit facility construction sites.

(Section 3.1 amended 1/11/96)

Section 3.2: General

No person shall drive, stop, park, or leave standing any vehicle, as defined in Section 670 of the California Vehicle Code, on any Trolley parking lot or other transit facility except in full compliance with the traffic laws of the State of California and conditions and regulations adopted herein. As used herein the term "Trolley parking lot or other Transit Facility" includes entrances and exits to and from any such facility.

(Section 3.2 amended 1/11/96)

Section 3.3: Patron Parking

Parking in San Diego Trolley lots and other transit facilities is for transit patrons only. Any vehicle belonging to other than transit patrons may be removed at the risk and expense of its owner. For purposes of this Ordinance, a patron is defined as a person who parks a vehicle on a Trolley parking lot facility adjacent to a Trolley station or other transit facility and who thereafter directly proceeds to board a Trolley vehicle or public transit bus at the lot or facility.

(Section 3.3 amended 1/11/96)

(Section 3.3 amended July 11, 1983)

Section 3.4: Time Limit

Maximum limit of time for parking in San Diego Trolley lots and transit facilities is twenty-four (24) consecutive hours unless otherwise posted. Any vehicle exceeding this limit may be removed to a suitable place for storage at the risk and expense of its owner.

(Section 3.4 amended 1/11/96)

Section 3.5: Designated Spaces

Motor vehicles shall be parked only in areas posted and dedicated for parking, and shall be parked in an orderly manner within the lines indicating a single space. Motor vehicles shall not be parked within any driveway, in any unlined area, in any yellow painted area, in any pedestrian walkway, in any bus loading zones, or in any areas so prohibited by control signs.

Section 3.6: Maximum Speed Limit

No person shall at any time drive any vehicle in any Trolley parking lot or transit facility at a speed in excess of 15 miles per hour, unless otherwise posted.

(Section 3.6 amended 1/11/96)

Section 3.7: Maximum Vehicle Dimensions

No person shall drive, park, or leave standing in any Trolley parking lot or transit facility any vehicle or combination of vehicles which exceeds three tons in total aggregate weight or exceeds six and one-half feet in width or 19 feet in length.

(Section 3.7 amended 1/11/96)

Section 3.8: Motorcycles

No person shall park or leave standing any motorcycle or motor-powered bicycle except in areas specifically designated for such purpose in Trolley parking lots or transit facilities.

(Section 3.8 amended 1/11/96)

Section 3.8.1:

Any violation of Sections 3.2 through 3.8 inclusive of this Ordinance shall be an infraction punished upon a first conviction by a fine not exceeding fifty dollars (\$50) and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars (\$100) and for a third or any subsequent conviction within a period of one year by a fine of not exceeding two hundred fifty dollars (\$250). For purposes of this section, a bail forfeiture shall be deemed to be a conviction of the offense charged.

Section 3.9: Additional Usage by Special Permit

Notwithstanding Section 3.3 or Section 3.4, the MTDB General Manager may issue permits for private use of parking lots and transit facilities and for parking in excess of 24 hours in accordance with such rules and regulations as may be prescribed by the MTD Board.

(Section 3.9 amended 1/11/96)

(Section 3.9 added 7/11/83)

Section 3.10: Public Notice

Before the expiration of fifteen (15) days after its passage, this Ordinance shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

TFL:lst
CD-ORD03.JPL
1/19/96

Amended: 1/11/96
Amended: 7/11/83
Repealed & Readopted: 1/25/82
Adopted: 6/8/81

Att. A, AI 5, 6/28/07

SAN DIEGO METROPOLITAN TRANSIT DEVELOPMENT BOARD

**CODIFIED ORDINANCE NO. 5
(as amended 6/28/07)**

An Ordinance Relating to the Enforcement
Authorities of Code Compliance Inspectors,
Assistant Code Compliance Supervisors,
the Code Compliance Inspection Supervisor,
and Taxicab Inspectors I & II

The Board of Directors of the San Diego Metropolitan Transit System MTS) do ordain as follows:

Section 5.1 Statutory Authorities

A. The Metropolitan Transit System has been created by State law (Public Utilities Code Section 120000 through 12054) as a public agency with the authority and duty to plan and construct exclusive public mass transit guideways (Section 120260) and to acquire, construct, maintain, and operate or let a contract to operate public transit systems and related transportation facilities and services (Section 120264).

B. Additionally, the Board is vested with the duty to adopt all ordinances and make all rules and regulations proper and necessary to regulate the use, operation, and maintenance of its property and facilities, including its public transit systems and related transportation facilities and services (Section 120105). The violation of any ordinance, rule, or regulation enacted by the Board relating to evasion of fares in any transit facility owned or controlled by the Board is an infraction and upon a violation after the second conviction is a misdemeanor (Section 120450).

C. The provision of information known to be false to a Code Compliance Inspector, Assistant Code Compliance Supervisor, the Code Compliance Inspection Supervisor, or the Transit Security Administrator (hereinafter cumulatively referred to as Inspectors) is similarly an infraction or misdemeanor (Section 120450.5).

D. The violation of any ordinance, rule, or regulation prohibiting unauthorized operation or manipulation of transit facilities or prohibiting unauthorized tampering or interference with transit facilities is similarly an infraction or misdemeanor (Section 120451).

E. The violation of any ordinance, rule, or regulation prohibiting the unauthorized entering into, climbing upon, holding onto, or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways is an infraction or misdemeanor (Section 120452).

F. In implementation of those provisions of State law, the Board has adopted Ordinance No. 13, prohibiting specified conduct onboard transit vehicles and prohibiting specified actions on or about the transit facilities. The Board has further adopted Ordinance No. 2 requiring proof of fare payment by passengers using the San Diego Trolley and Ordinance No. 3, regulating parking in the San Diego Trolley parking lots and other transit facilities.

G. The Board is authorized to contract with cities and the County to license or regulate by ordinance any transportation services within such cities or the unincorporated area (Section 120266) and has done so by adoption of Ordinance No. 11, the enforcement of which will be done by Taxicab Inspectors I & II, and other Taxicab Administration staff designated in Section 5.3.

H. Pursuant to Penal Code Section 836.5, the Board may authorize public officers and employees to arrest a person without warrant, including officers and employees of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency and San Diego Trolley, Inc., is such a corporation.

(Section 5.1 amended 7/12/01)

(Section 5.1 amended 9/26/96)

(Section 5.1 amended 1/11/96)

(Section 5.1 amended 11/10/94)

(Section 5.1 amended 8/12/93)

Section 5.2 Purposes

In view of the multitude of regulations applicable to the facilities and vehicles of the San Diego Metropolitan Transit Development Board, it is desirable to clarify and specify the authority of the Inspectors, relative to various acts committed on or about the property.

Section 5.3 Duties and Authorizations

A. Inspectors employed by the San Diego Metropolitan Transit System (MTS) and Inspectors employed by San Diego Trolley, Inc., are hereby vested with the duty to enforce MTS Ordinances No. 2, No. 3, No. 4, No. 11, and No. 13. Business and Professions Code Sections 4140 and 25662, Health and Safety Code Sections 11364 and 11357(b), and 11532, Public Utilities Code Sections 5411.5, 120450, 120450.5, 120451, and 120452, Penal Code Sections 148, 219.2, 308(b), 369(g), 417.25(a), 470(a), 481.1, 555.1, 555.2, 587(a), 594, 594.1, 594.2, 594.4, 602(f), 602(o), 602(q), 640, 640(a), 640.5, 647(a), 647(c), 647(j), and 653(k), Vehicle Code Sections 5204(a), 21456, 21461(a), 21955, 22500, 22507, 22521, and 22526, San Diego City Municipal Code Sections 56.54 (at transit facilities owned, controlled, or used by the Board, including but not limited to transit centers, rail stations, bus shelters, and bus stops on public and private property), 58.05(b)(1), and 58.05(b)(2), and San Diego County Code of Regulatory Ordinances Section 32.1303, and in accordance with Penal Code Section 836.5 are authorized to arrest a person without a warrant whenever an Inspector has reasonable cause to believe that the person to be arrested has committed an infraction or misdemeanor in the Inspector's presence which is a violation of the statutes and ordinances which he or she has the duty to enforce.

B. Regulatory Specialists and the Taxicab Administrator, employed by MTS, are hereby vested with the duty to enforce MTS Ordinance No. 11 and, in accordance with Penal Code Section 836.5, are authorized to arrest a person without a warrant whenever a Taxicab Inspector has reasonable cause to believe that the person to be arrested has committed an infraction or misdemeanor in the Inspector's presence which is a violation of the statutes and ordinances which he or she has the duty to enforce.

C. Right-of-Way Agents, designated by the General Manager and employed by MTS are hereby vested with the duty to enforce MTS Ordinance No. 3 and, in accordance with Penal Code Section 836.5, are authorized to arrest a person without a warrant whenever an agent has reasonable cause to believe that the person to be arrested has committed an infraction or misdemeanor in the Agent's presence which is a violation of the statutes and ordinances which he or she has the duty to enforce.

(Section 5.3 amended 10/3/02)

(Section 5.3 amended 7/12/01)

(Section 5.3 amended 3/23/00)

(Section 5.3 amended 9/26/96)

(Section 5.3 amended 1/11/96)

(Section 5.3 amended 11/10/94)

(Section 5.3 amended 8/12/93)

(Section 5.3 amended 10/28/04)

Section 5.4 Severability

The provisions of this Ordinance are severable, and if any of the provisions, clauses, sentences, subsections, sections, words, or parts thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, sections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, section, word, or part had not been included therein or such person or circumstance to which the Ordinance or part thereof is held inapplicable has been specifically exempted therefrom.

Amended: 6/28/07

Amended: 10/28/04

Amended: 10/3/02

Amended: 8/9/01

Amended: 3/23/00

Amended: 9/26/96

Amended: 1/11/96

Amended: 11/10/94

Amended: 8/12/93

Repealed & Readopted: 12/12/91

Amended: 2/8/90

Amended: 10/13/88

Amended: 10/4/84

Amended: 2/27/84

Adopted: 7/25/83

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6/1/07

MTS ORDINANCE 13

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

**CODIFIED ORDINANCE NO. 13
(as Adopted 8/9/01 and amended on 11/13/08)**

**An Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles
and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop**

The Board of Directors of the San Diego Metropolitan Transit System (MTS) do ordain as follows:
Section 13.1: General

The use of the San Diego Metropolitan Transit System (MTS) facilities shall be conditioned upon the observance of this ordinance or any rules and regulations hereafter promulgated by MTS or pursuant to its authority; all rights, privileges, licenses and permits, express or implied, for the use of MTS facilities are revocable; and each such right, privilege, license or permit shall at the option of MTS or its duly authorized representative be revoked and canceled by and upon the breach of this ordinance or of the violation while in or upon MTS facilities or any applicable laws or ordinances.

Nothing herein contained or omitted from this ordinance shall be construed to relieve any person whatsoever from exercising all reasonable care to avoid or prevent injury or damage to persons or property.

Any requirement or provision of these rules relating to any prohibited act shall respectively extend to and include the causing, procuring, aiding or abetting, directly or indirectly, of such act; or the permitting or the allowing of any minor in the custody of any person, doing any act prohibited by a provision hereof.

Any act otherwise prohibited by these rules shall be lawful if performed under, by virtue of, and strictly in compliance with the provisions of an agreement, permit, or license issued or approved by MTS and/or San Diego Trolley, Inc. (SDTI), and/or San Diego Transit Corporation (SDTC), and to the extent authorized thereby.

These rules are in addition to and supplement all applicable laws or ordinances.

Section 13.2: Definitions

The following terms, as used in this ordinance shall, unless otherwise expressly stated or unless the context clearly requires a different interpretation, have the following meaning.

A. Bicycle - A "bicycle" is a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having two wheels.

B. Bus - A "bus" is any motor vehicle, other than a motortruck or truck tractor, designed for carrying more than 10 persons including the driver, and used or maintained for the transportation of passengers, except that any motor vehicle, other than a motortruck or truck tractor, designed for carrying not more than 12 persons, including the driver, which is maintained and used in the nonprofit transportation of adults to and from a work location as part of a carpool program or when transporting only members of the household of the owner thereof, shall not be considered to be a bus for the purposes of this section.

C. Bus Stop - A "bus stop" is a designated area marked by a sign depicting a specific route number or numbers for the loading and unloading of passengers from or onto a bus, which may or may not include a bench or shelter.

D. Facility or Transit Facility – A "facility" or "transit facility" includes, but is not limited to, transit centers, rail stations, bus shelters, and bus stops on public or private property.

E. Pedestrian – A "pedestrian" is any person who is afoot or who is using a means of conveyance propelled by human power other than a bicycle.

F. Tailgate – Any person standing, sitting, or remaining in the area of a vehicle, chair, table, ice-chest, barbeque, or similar device for the purpose of consuming any food or beverage, or for the purpose of socializing before during or at the conclusion of an event.

G. Trolley – A "trolley" is a vehicle which is propelled by electric power obtained from overhead trolley wires and is operated upon rails.

H. Trolley Station – A "trolley station" is a designated area marked by a sign depicting a specific line; i.e., Orange, Blue, Red, Green, etc., for the loading and unloading of passengers from or onto a trolley, which may or may not include a bench or shelter.

I. Transit Vehicle – A "transit vehicle" shall mean buses and trolleys or any other form of public conveyance utilized, owned, or controlled by MTS, SDTI, or SDTC.

J. Validator – A "Validator" is a machine used to deduct the proper fare from a Compass Card prior to a passenger boarding a bus or trolley and prior to and after a passenger boards and alights a Centre City San Diego Trolley if the passenger wishes to receive the Centre City San Diego fare (as defined in MTS Ordinance No. 4).

Section 13.3: Fares

Passengers shall be permitted on a transit vehicle or in a transit station owned, controlled, or used by MTS or its subsidiaries or contractors only upon payment of such fares and under such circumstances as may from time to time be ordained by MTS. It is unlawful for any person to refuse to pay, or to evade or attempt to evade the payment of such fares.

If passengers are utilizing a Compass Card (as defined in MTS Ordinance No. 4), they must present their card to a fare Validator when entering a bus, prior to waiting in any fare paid zone, prior to boarding a trolley, and prior to boarding and after exiting a trolley originating and terminating in Centre City San Diego (as defined in MTS Ordinance No. 4) in order to receive the Centre City San Diego cash fare. This procedure is known as "Tap or Tapping." Tapping is a condition precedent to utilizing MTS bus and trolley service and the Compass Card. It shall be unlawful for passengers to refuse to Tap, or to evade Tapping, or to attempt to evade Tapping when utilizing a Compass Card. MTS reserves the right to confiscate the Compass Card for noncompliance with this provision or the provisions of MTS Ordinance No. 4.

(Section 13.3 amended 11/13/08)

Section 13.4: Prohibited Conduct Onboard Transit Vehicles

It shall be unlawful for passengers or occupants while aboard a bus or trolley while the vehicle is transporting passengers in regular route service, contract, special, or community-type service within the MTS jurisdictional area to:

A. Consume any food or beverage, except that passengers may consume beverages while onboard a trolley if the beverages are contained in a spill-proof or screw-top container or bottle. Examples of such spill-proof or screw-top containers or bottles include, but are not limited to, water

bottles and soda bottles with screw tops, personal beverage containers with snap-on or screw-on lids, and coffee cups or mugs with snap-on or screw-on lids.

- B. Smoke or carry a lighted or smoldering pipe, cigar, cigarette, or tobacco in any form.
- C. Operate any radio, phonograph, tape player, or other such instrument that is audible to any other person on a transit vehicle.
- D. Expectorate.
- E. Discard litter.
- F. Extend his/her head, hand, arm, foot, leg, or other portion of the body through any window.
- G. Interfere in any manner whatsoever with the operator or operation of any bus or trolley.
- H. Possess an open alcoholic beverage container, irrespective of whether the container is spill-proof or screw-top.
- I. Ride any bike, skateboard, or scooter.
- J. No person shall put his foot on any seat provided for any passengers on a bus or trolley, or place any article on such seat which would leave grease, oil, paint, dirt, or any other substance on such seat.
- K. No person shall activate without justification, mutilate, deface or misuse in any manner, any safety device or intercom located onboard a bus or trolley.
- L. No person shall ride upon the outside or roof of any bus or trolley.

(Section 13.4 amended 01/18/07)

Section 13.5: Prohibited Actions on or About a Transit Facility

- A. No person (except MTS/SDTI/SDTC employees, agents, or authorized visitors) shall enter upon the roadbed, tracks, structures, right-of-way, or other parts of a transit facility, which are not open to passengers or to the public.
- B. No person shall drink any alcoholic beverage or possess an open alcoholic beverage container on or in a transit facility except on premises licensed therefor.
- C. No person shall sit, lie, or stand with any portion of his/her body extending within 8 feet 6 inches of the centerline of the outside rail on straight track or within 9 feet 6 inches of the centerline of the outside rail on curved track except while entering or alighting from a trolley stopped at that station.
- D. No person shall injure, deface, destroy, loosen, remove, or tamper with the transit facility.
- E. No person shall injure, mutilate, deface, alter, change, displace, remove, or destroy any sign, notice, signal, or advertisement on the transit facility.
- F. No person shall interfere with any lamp, electric light, electric fixture, or density on the transit facility.

G. No person shall write, paint, or draw any inscription or figure on or deface any transit facility.

H. No person shall disobey or disregard the notices, prohibitions, instructions, or directions on any sign posted on the transit facility.

I. No person shall interfere with, encumber, obstruct, or render dangerous any transit facility.

J. No person shall throw or project a stone or other missile at any trolley, bus or at any person or thing on or in the transit facility.

K. No person shall throw or project a stone or other missile from any transit facility or transit vehicle.

L. No person shall fail or refuse to comply with any lawful order or direction of any MTS inspector, security officer, whether an employee or designated agent of MTS, or any peace officer.

M. No person shall do, aid, abet, or assist in doing any act which may be dangerous, harmful, or injurious to any person or property within the transit facility, said act being not specifically prohibited herein.

N. No person shall put his foot on any seat provided for any passengers of the transit facility or place any article on such seat which would leave grease, oil, paint, dirt, or any other substance on such seat.

O. No person shall urinate or defecate in or upon unauthorized locations on the transit facility.

P. No person shall post, distribute, or display commercial signs, advertisements, circulars, handbills, or written material of a commercial nature on or within the transit facility, nor shall any person engage in any verbal solicitations of a commercial nature on or within said transit facility.

Q. No person shall climb upon or jump the trolley couplers.

R. No person shall discard litter in any transit facility or transit vehicle.

S. No person shall loiter in the immediate vicinity of any posted property.

T. No person shall tailgate.

(Section 13.5 amended 06/28/07)

Section 13.6: Animals

No person shall bring, carry unto, or convey upon the transit facility, a dog, or other animal, unless it is completely enclosed in a carrying case, which can be accommodated in the lap of a passenger with no danger or annoyance to other passengers. This rule shall not apply to a "service" or "assistance" animal. A "service" or "assistance" animal is trained to assist persons with disabilities. Such animals shall be properly harnessed when possible. Service or assistance animals must be under the control of the person at all times. MTS reserves the right to inquire about the status of such animals.

(Section 13.6 amended 6/28/07)

Section 13.7: Meetings

No person shall hold any meeting, perform any ceremony, make any speech, address or oration, exhibit, or distribute any sign, placard, notice, declaration, or appeal of any kind or description within any transit facility or upon any transit vehicle or platform without written permit from an MTS official.

Section 13.8: Selling, Peddling, Leasing, Etc.

No person shall exhibit, sell, or offer for sale, hire, lease, or let out in or about the transit facility or a transit vehicle any object or merchandise, whether corporeal or incorporeal, except concessions under contract to MTS.

Section 13.9: Bicycles

Bicycles are permitted on transit vehicles under the following conditions:

- A. Bicyclists must be at least 16 years of age and have a valid proof of payment of fare.
 - B. Only one bicycle is allowed onboard a trolley during the hours of 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m. weekdays. At any other time, no more than two bicycles per trolley will be allowed. No bicycles will be permitted in the aiseways at any time.
 - C. Bicycles will be permitted to board trolleys at the rear doors only and must be placed against the rear driver's cab.
 - D. Bicyclists must remain with their bicycles at all times.
 - E. When part of a group charter, more than two bicycles per car may be permitted at the sole discretion of MTS.
- (Section 13.9 amended 01/18/07)**

Section 13.10: No Smoking at any Transit Facility or Bus Stop

No person shall smoke any materials, whether tobacco or any other product using any device, cigarette, cigar, pipe, or any other apparatus, or utilize any smoking device, cigarette, cigar, pipe, or other apparatus at the following locations owned, operated, or controlled by MTS, SDTI and/or SDTC:

- A. Within 25 feet from any bus stop;
- B. Within 25 feet of any trolley station; and
- C. Within 25 feet of any transit facility.

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